

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER UNDER SECTIONS 11 AND 11B OF THE SEBI ACT, 1992
IN THE MATTER OF DESIGN AUTO SYSTEMS LTD.

1.0 Background

1.1 The Securities and Exchange Board of India (SEBI) conducted investigations into dealings in the shares of Design Auto Systems Ltd. (DASL) for the period between August 2001 and January 2002 pursuant to a preferential allotment made by the said company to another company called Bonanza Biotech Ltd. (BBL) on swap basis in the ratio of 1:1. Both DASL and BBL shares were listed on various stock exchanges. DASL shares were listed on the Bombay Stock Exchange Ltd (BSE), Madhya Pradesh Stock Exchange (MPSE) and Ahmedabad Stock Exchange (ASE). BBL shares were listed on BSE and MPSE. The investigations revealed as under:

- (a) DASL made a preferential allotment of 10 crore of its shares (said shares) to BBL on October 29, 2001 which was about 14 times of the paid up capital of DASL before the allotment. The consideration was another preferential allotment of 10 crore shares made by BBL to DASL on the same date which was about 5 times of the paid up capital of BBL before the allotment.
- (b) DASL made application for listing the said shares allotted to BBL to various stock exchanges where its original shares were listed. Moreover, no listing application was made with ASE, where DASL's original shares were listed. The MPSE granted listing permission albeit irregularly. The BSE kept the listing application pending, as it apprehended that DASL would have committed certain violations of law in the process. However, even MPSE had not granted the trading permission. Hence, no trading permission was available to above referred shares issued to BBL.

- (c) Eventually, the listing application of DASL was rejected by BSE. In the meantime, on the basis of listing permission given by MPSE, the Central Depositories Services Ltd. (CDSL), a depository registered with SEBI, dematerialized these DASL shares and credited them to the beneficial owner account of BBL.
- (d) BBL offloaded substantial portion of these unlisted shares of DASL on the trading platform of BSE through a network of entities. Off-loading or trading of shares whose listing permission has not been granted, is not permissible in terms of BSE Bye-laws and constitutes bad delivery thereunder. The BSE Clearing House or any other parties to the trades could not immediately detect the irregularity as these shares were in the dematerialized form and were fungible with the already existing and validly listed shares of DASL which were listed thereon. As a result, a number of innocent investors were defrauded and saddled with unlisted shares of DASL which could not be legally transacted on the BSE.
- (e) When this came to the notice of SEBI and BSE, many transactions were reversed and the demat account of BBL was frozen after recovering a portion of the shares that were offloaded by it.
- (f) Subsequently, investigations were initiated by SEBI to probe into the alleged and apparent malpractices committed by DASL, BBL and other entities.

1.2 During the course of the aforesaid investigations, summons was issued to DASL to appear before the Investigating Authority since it was one of the parties to the principal transaction. DASL challenged it before the Hon'ble High Court of Madhya Pradesh, Indore Bench by filing a writ petition, raising various objections to SEBI's jurisdiction (WP No.673/2004). BBL had also challenged a similar summons issued by SEBI before the same Court (WP

No.150/2004). Both the writ petitions were dismissed by the Hon'ble Court by orders dated March 04, 2005. Detailed order was passed in WP No.150/2004 and it was made equally applicable to DASL by a short order passed in WP No. 673/2004. While dismissing the petitions, the Hon'ble Court directed SEBI to ensure expeditious completion of investigation and further directed DASL and BBL to co-operate in the investigation so as to enable the Investigating Authority to complete the same expeditiously.

1.3 The findings of investigation as above, pointed to various violations including that of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices in the Securities Market) Regulations, 1995 ("the PFUTP Regulations") by DASL, BBL and other entities suspected to be involved. SEBI, therefore issued show cause notices to DASL, BBL and other entities suspected to be involved in the transactions requiring them to show cause as to why appropriate directions should not be passed. The show cause notice (SCN) issued to DASL was dated June 30, 2005.

1.4 DASL, instead of replying to the show cause notice, raised certain objections again to SEBI's jurisdiction and further sought certain documents relied upon by SEBI vide its letters dated July 21, 2005 and August 31, 2005. SEBI, thereupon replied vide letters dated August 22, 2005 and September 19, 2005, inter alia stating that the jurisdictional objections, if any, may be raised before the authority conducting proceeding in relation to SCN dated June 30, 2005 issued to DASL, i.e., Whole Time Member, SEBI.

1.5 DASL challenged the aforesaid letter dated September 19, 2005 of SEBI by filing another writ petition before the Hon'ble High Court of Madhya Pradesh, Indore Bench. The Hon'ble Court disposed of the writ petition by an order dated February 13, 2006 which was received at SEBI office on February 27, 2006 with the following observations:

“Since only show cause notice has been issued, therefore, at this stage the petition cannot be entertained. The submission of petitioner is that petitioner should be heard first on the question of preliminary objection.

In view of this, the petition is disposed of with the direction that before proceeding further the Competent Authority shall take into consideration the preliminary objection regarding jurisdiction as raised by the petitioner and shall pass a reasoned Order after giving an opportunity of hearing to the petitioner. If the Competent Authority is of the view that it has the jurisdiction then it shall be at liberty to proceed further.

With the aforesaid observations the petition stands disposed of.”

1.6 In compliance with the directions of the Hon’ble Court, I had earlier granted DASL an opportunity of hearing on the limited question of their preliminary objections, including the jurisdictional question, on April 25, 2006, which they availed. After hearing their submissions, I passed a reasoned order on June 22, 2006 holding that SEBI had jurisdiction in the matter and that the preliminary objections raised by DASL were not sustainable. It was accordingly directed that the proceedings initiated by show cause notice dated June 30, 2005 should be continued in accordance with law and that DASL shall file its reply to the show cause notice within 15 days.

1.7 Instead of complying with the said direction, DASL again filed a writ petition before the Hon’ble High Court of Madhya Pradesh, Indore Bench challenging the said order dated June 22, 2006 (WP No. 4479 of 2006). As no stay was granted initially by the Hon’ble High Court, a hearing was fixed before me on October 18, 2006 and DASL appeared through their advocates and made their submissions. They also filed written submissions. As requested by the Advocates, further time was granted to them for clarifying a particular point mentioned in the written submissions, which they did by their letter dated November 6, 2006.

1.8 In the meantime, the writ petition came up for hearing before the Hon'ble Court on October 17, 2006 when it granted time to SEBI to file its reply. The Hon'ble Court also passed an interim order on October 17, 2006 permitting SEBI to continue the proceedings but restrained it from passing any final order in the matter. Subsequently, the Hon'ble Court dismissed the writ petition vide an order dated February 20, 2007 holding that the proper course would be to allow SEBI to pass the final order. The certified copy of the said order was received by SEBI's Advocates on February 24, 2007. The Hon'ble Court directed in para 8, as follows:

"In view of the foregoing discussion the petition fails and is dismissed. As a consequence, the interim order dated 17.10.2006 passed by this Court is vacated. The respondent No. 2 (SEBI) is granted 2 weeks time to pass final orders after completing the investigations in accordance with law if not so far completed so as to enable him to pass final orders."

Accordingly the present order is being passed in compliance with the directions of the Hon'ble Court.

2.0 Notice, hearing and reply

2.1 The following are the main allegations made in the show cause notice dated June 30, 2005 issued to DASL:

(a) Preferential allotment of 10 crores shares was made by DASL to BBL on a swap basis on October 29, 2001. These shares were not granted listing permission in BSE, though they were listed in MPSE. No listing application was made to ASE. However, trading permission was not granted by any exchange.

(b) During the period of investigation i.e. August 2001 to January 2002, though there was no substantial price movement in the shares of DASL, there was a spurt in volumes. The fall in price and the spurt in volumes

were due to continuous off-loading of the unlisted shares of DASL allotted to BBL.

- (c) The allotment made by DASL contravened SEBI Circular dated March 8, 2001 and also clause 24(a) of the Listing Agreement read with section 21 of the Securities Contracts (Regulation) Act, 1956, as no in-principle approval was taken by DASL before making the swap allotment of shares to BBL.
- (d) The allotment of 10 crores shares of DASL to BBL in exchange for shares of BBL was further not based on any prudent commercial sense. Shri Sarvesh Garg, the Chairman and Managing Director (CMD) of DASL made a statement dated January 28, 2004, to the Investigating Authority that BBL was coming up with a biotech project and it was in that context that the allotment was made, and he undertook to provide copy of the Board minutes of DASL regarding this. DASL had also undertaken to file a copy of the project report of BBL with SEBI. However, no such minutes or project report was produced and it is seen that no mention was made about the biotech project of BBL either in the available Board minutes, or in the Extraordinary General Meeting (EGM) notice or explanatory statement u/s 173(2) of the Companies Act or in the alleged MOU entered into between DASL and BBL. The same was also not mentioned in the Annual Report of DASL for the year 2001-2002.
- (e) The swap allotment between DASL and BBL was therefore only a conduit to enhance the number of shares to loot innocent investors by off-loading these unlisted shares of DASL in the market.
- (f) DASL also tried to create fraudulent documents to cover up their lapses. It produced a copy of a resolution purportedly passed in EGM held on October 25, 2001 under section 372A of the Companies Act. However,

this resolution was not featuring as an agenda item in the notice to the EGM and also did not figure in any earlier correspondence with SEBI or the stock exchanges. Thus, it can be concluded that the document was fabricated.

- (g) DASL filed Form 2 and Form 5 with the ROC on December 21, 2001 and February 11, 2002 respectively after considerable delay. The forms had not been filed at the time of filing the listing application with MPSE. While filing the listing application with MPSE, DASL confirmed to MPSE by their letter dated October 31, 2001 that “all the legal and statutory formalities have been complied with and no formalities is pending for issue / allotment of these securities as well as no authority has restrained the company for making the above allotment and these securities are issued are now eligible for listing on stock exchanges.” They had also undertaken to MPSE to file Form 5 within the stipulated time, which as seen above, they did not fulfill.
- (h) The management of DASL was also involved in off-loading these unlisted shares to innocent investors and actively assisted BBL in its nefarious designs, as seen from involvement of Shri Sarvesh Garg, MD of DASL, Shri Prashant Rajgarhia, Director of DASL and Vargin Finance Pvt. Ltd. (VFPL), Mr. Murali Nair, Secretarial Executive of DASL and Mr. Arvind Vaswani, employee of DASL.
- (i) The Directors of BBL included Shri Sharad Gujrati, Shri Amit Patel, Shri Rakesh Pandya and Smt. Druma Vaghela during the period of investigation as per the information supplied by BBL vide their letter dated 14.11.2003. It has also been mentioned that Shri Deep Trivedi was also the director of BBL upto 10.10.2000 i.e prior to the period of investigation. Shri Deep Trivedi was stated by Shri Parshwa Finance to be the person dealing on behalf of Coverage & Consultants Ltd. Besides, Shri Sharad

Gujrati was the Director with C&C also. Coverage & Consultants Ltd. was one of the major clients instrumental in selling the unlisted shares of DASL through the stock exchange mechanism. It may also be noted that BBL and C&C shared the same address at Indore. The detail of Directors as provided by BBL appears to be completely false as from the Form No. 2 and Form no. 23 submitted by the company to ROC vide their letter dated 18.01.2002 it has been seen that the papers were presented by one Mr. Arvind Vaswani as Director of BBL. The copies of these papers have been forwarded by BBL only vide their letter dated 14.11.2003. In addition to that Mr. Sarvesh Garg, Managing Director of DASL has also mentioned in his statement recorded by SEBI on 28.01.2004 that Shri Arvind Vaswani had joined BBL as a professional Director sometime in November 2001. However, his appointment in BBL did not materialize and he resigned from the Board of BBL in January 2002. The name of Shri Arvind Vaswani is not appearing in the list of Directors as submitted by BBL and the information submitted by BBL in this regard is false.

- (j) We have also scrutinized the client registration form entered into between BBL and CD Equisearch P Ltd. The Agreement has been signed by one Mr. Manish Ganeriwala as Director of BBL. Vide Board Resolution dated June 05, 2001 (copy enclosed with member Client Agreement Form) of BBL, Mr. Manish Ghaneriwala has been authorized as Director to sell the shares of DASL on behalf of the company i.e. BBL. The Agreement is dated October 11, 2001. From the aforementioned facts it was concluded that Mr. Manish Ganeriwala was also the Director of BBL. The copy of Resolution has been signed by Mr. Arvind Vaswani as Director. Hence the information supplied by BBL cannot be relied upon. Mr. B P Inani, Authorised Representative of CD Equisearch P Ltd in his statement has also confirmed that Mr. Manish Ganeriwala was on the Board of BBL.

- (k) From the demat account of BBL, where to 10 crores equity shares of DASL were credited, 6 crore shares were transferred to various entities for off-loading in the market. The details of the transfer from demat account of BBL are as under:

Table A

Sr. No.	Date	DP ID	Client ID	Quantity (No. of shares)
1	13.11.2001	IN300888	13162987 – Manoj Ghaneriwala	50,00,000
2	13.11.2001	IN300888	14171657 – DG Goenka Equities Pvt. Ltd.	50,00,000
3	19.11.2001	IN301485	10000677 – Pinnacle Finstock Pvt. Ltd.	50,00,000
4	28.11.2001	IN300351	10008759 – Shyam & Lata Parwaney	2,00,000
5	06.12.2001	IN301485	10029747 – Coverage & Consultants	1,00,00,000
6	27.12.2001	IN301983	10005042 – Ujjwal Shende	1,33,00,000
7	27.12.2001	IN301983	10005059 – Ashutosh Kothari	1,50,00,000
TOTAL				5,35,00,000

Table B - I

Sr. No.	Date	BO ID	Quantity (No. of shares)
8	13.11.2001	1302120000000363 – Muralidharan Nair	50,00,000

Table B - II

	Date	CMBP ID	Quantity (No. of shares)
9	11.12.2001	IN651178 – CD Equisearch Pvt. Ltd.	5,00,000
10	12.12.2001	IN651178 – CD Equisearch Pvt. Ltd.	5,00,000 – to CD Equisearch Pvt. Ltd.
11	18.12.2001	IN651178 – CD Equisearch Pvt. Ltd.	5,00,000 – to CD Equisearch Pvt. Ltd.
		TOTAL	65,00,000
		GRAND TOTAL	6,00,00,000 shares

The remaining 4 crore shares have been frozen by CDSL on January 8, 2002

A detail of DP a/c of BBL is as below:

Date	Recd. from	Transferred to	No. of shares	Balance
27.12.2001				4,00,00,000
10.01.2002	Ujwal Shende		1,33,00,000	
10.01.2002	Ashutosh Kothari		1,50,00,000	6,83,00,000
11.01.2002	Murali Nair		39,00,000	7,22,00,000
16.01.2002	Coverage & Consultants		58,83,151	7,80,83,151
18.01.2002	Coverage & Consultants		5,05,000	7,85,88,151
18.01.2002	Pinnacle Finstock		22,09,816	8,07,97,967
14.03.2002	Manoj H Ganeriwala		41,14,500	8,49,12,457
15.03.2002	D.G. Goenka		42,66,459	8,91,78,926
	Murali Nair		10,00,000	9,01,78,926

(l) Further movement of the unlisted shares were given as under:

i. (IN300888/ 13162987): Manoj H Ganeriwala and Madhu M Ganeriwala. (Manoj H Ganeriwala is a Director of the broker DG Goenka Equities Pvt. Ltd. Address: Shankerdeep, Flat No.1, Tagore Road, Santacruz (W), Mumbai 400 054

Date	Recd. from	Transferred to	No. of shares	Balance
13.11.2001	BBL		50,00,000	50,00,000
22.11.2001		Pinnacle Finstock	50,00,000	Nil
12.12.2001	Murali Nair		10,00,000	10,00,000
29.01.2002	Coverage & Consultants		2,78,180	
	Pinnacle Finstock		47,11,320	59,89,500
05.03.2002		Arihant Capital Markets	8,75,000	
14.03.2002		BBL	41,14,500	
14.03.2002		Murali Nair	10,00,000	Nil

ii. (IN300888/ 14171657): Account belongs to DG Goenka Equities Pvt. Ltd., member BSE (Address: PS9, Rotunda Building, Bombay Samachar Marg, Fort, Mumbai 400 023).

Date	Recd. from	Transferred to	No. of shares	Balance
13.11.2001	BBL		50,00,000	
12.12.2001	Murali Nair		1,00,000	51,00,000
13.12.2001		Delivered in Market	23,100	
12.01.2002		CDSL a/c of DG Goenka	76,900	50,00,000
12.01.2002		Delivered in	5,16,541	

		market		
14.01.2002		Delivered in market	2,17,000	42,66,459
15.03.2002		BBL	42,66,459	Nil

iii. (IN301485/ 10000677): Account belongs to Pinnacle Finstock Pvt. Ltd. (Address: B-81, Pariseema Complex, CG Road, Ellisbridge, Ahmedabad 380 006), sub broker to Active Finstock Pvt. Ltd.

Date	Recd. from	Transferred to	No. of shares	Balance
19.11.2001	BBL		50,00,000	
22.11.2001	Manoj Ganeriwala		50,00,000	
18.01.2002		BBL	22,09,816	
29.01.2002		Manoj Ganeriwala	47,11,320	30,78,864

iv. (IN301485/ 10029747): Account belongs to Coverage & Consultants Ltd. (Address: 203, Apollo Towers, 2 MG Road, Indore, MP 452 001).

Date	Recd. from	Transferred to	No. of shares	Balance
06.12.2001	BBL		1,00,00,000	
18.01.2002		Manoj Ganeriwala	2,78,180	
16.01.2002		BBL	58,83,151	
18.01.2002		BBL	5,05,000	33,33,669

v. (IN301983/ 10004669): Account belongs to Murali Nair (Address: 108-B, Vardha Vihar, Lalaram Nagar, Indore, MP 452 001)

Date	Recd. from	Transferred to	No. of shares	Balance
13.11.2001	BBL		50,00,000	
12.12.2001		Manoj Ganeriwala	10,00,000	
12.12.2001		DG Goenka	1,00,000	
29.12.2001		BBL	39,00,000	NIL
14.03.2002	Manoj Ganeriwala		10,00,000	
	BBL		10,00,000	NIL

(m) A reconciliation of the transfer of 10 crore unlisted shares from BBL's demat account was also worked out in the SCN from the available data, which is as under:

Reconciliation of transfer of 10 crore shares of BBL

Total shares credited	-	10,00,00,000
Shares frozen in the DP a/c	-	<u>9,01,78,926</u>
Shares delivered in the market/		
Unaccounted for	-	<u>98,21,074</u>

Coverage & Consultants	33,33,669
Pinnacle Finstock	30,78,864
CD Equisearch	15,00,000
Shyam Parwaney	2,00,000
Manoj Ganeriwala	8,75,000
D.G. Goenka	<u>8,33,541</u>
	<u>98,21,074</u>

- (n) The role of Mr. Murali Nair who was an employee of DASL in the alleged off-loading by BBL was given in detail. It was concluded that BBL was assisted by DASL through its employee Mr. Murali Nair in the process of off-loading of unlisted DASL shares in the market.
- (o) It was observed that a clear nexus was indicated between DASL and BBL in activities pre and post the swap allotment of shares, as seen from the following:
- (i) Matching addresses of Murali Nair, DASL and BBL as mentioned by Shri Murali Nair while opening de-mat account CDSL.
 - (ii) Shri Murali Nair dealt with brokers on behalf of BBL.
 - (iii) Shri Arvind Vaswani, employee of DASL was appointed on Board of BBL and actively participated in off-loading the unlisted shares.
- (p) Besides giving electronic credit on November 10, 2001 to BBL's demat account, DASL also issued a jumbo share certificate for 10 crore shares to BBL on October 29, 2001 and a copy of this certificate was enclosed along with listing application made on December 20, 2001 to BSE. The registrar of DASL, Ankit Consultancy Ltd. denied that any physical certificate was issued to BBL and they stated that DASL approached them for dematerializing the said 10 crore shares by their letter dated November 07, 2001. Thus, it was concluded that electronic credit was done with

fraudulent intent to facilitate off-loading unlisted shares of DASL by BBL, even though the jumbo physical certificate was issued earlier. This fact also points to the nexus between BBL and DASL in the alleged off-loading.

- (q) Details were also given regarding Mr. Murali Nair's role in transactions of other parties such as Manoj Ganeriwala and DG Goenka Equities Pvt. Ltd.
- (r) Details were also given regarding transactions of VFPL in which Shri Prashant Rajgariha (a director of DASL) was a director.
- (s) In view of the above, it was concluded that DASL and its directors were instrumental in the preferential allotment on swap basis to BBL, which was fraudulent. DASL and its directors were also involved in off-loading the unlisted shares to the innocent investors and actively assisted BBL and its related entities in the exercise. DASL had also given electronic credit of shares to BBL even though a jumbo share certificate regarding the same shares was already issued to them, which shows their nexus.
- (t) DASL and its directors have therefore violated regulations 3, 4(a), (b), (c) and (d) of the PFUTP Regulations, 1995. DASL has also violated the listing agreement and directions contained in SEBI circular no.SMRDP/Policy/CIR-15/2001 dated March 08, 2001.

2.2 In response to the show cause notice, as mentioned above, DASL's representatives attended a hearing before me on October 18, 2006 and also submitted written submissions. The sum and substance of the submissions of DASL are as follows:

- (a) The noticee is a company incorporated under Companies Act, 1956 and engaged in business of manufacture and supply of auto parts, i.e. auto

- bulbs, coils, etc. and that its shares were listed on BSE in 1994 and that the noticee company had listed capital of 6225000 equity shares of Rs.10/- each.
- (b) That the noticee no.1, sometime in December 1999, made a preferential issue of 11,00,000 equity shares of Rs.10/- each with the premium of Rs.3/- per share to the promoters and other body corporate as permissible under the SEBI Guidelines and the provisions of the Companies Act, 1956.
- (c) The noticee had entered into an agreement with BBL for swap of ten crores equity shares of Rs.10/- each, dated September 15, 2001 and further it had also obtained a valuation report from a reputed firm of Chartered Accountants namely M/s S.N. Kabra & Company dated September 30, 2001, regarding the valuation of the equities of the noticee and BBL. Further, it submitted that the project report submitted by BBL was duly studied and subsequently returned to BBL on request. In this view, the decision was a prudent business decision as at that time bio-technology was a sunrise industry.
- (d) That the noticee after obtaining the approval of its shareholders in a general meeting held on October 25, 2001, as prescribed under the Companies Act, 1956 and also the SEBI Guidelines, had on October 29, 2001 allotted ten crore equity shares of Rs.10/- each to BBL on a preferential basis.
- (e) It was submitted that the noticee company made an application to the MPSE for listing of the said 10 crore equity shares and submitted full details, on which the MPSE granted permission for listing on its Exchange on November 05, 2001.

- (f) Further, on the basis of the listing approval granted by the MPSE, the CDSL de-materialized the said Ten crore equity shares in favour of BBL on November 10, 2001 and informed the same to noticee no.1 by letter dated November 10, 2001. Noticee no. 1 had informed the CDSL that listing approval was still awaited from BSE.
- (g) Further, the noticee has alleged that BBL and certain members of the BSE purported to deliver the said shares which were yet to be listed on the BSE. However, the Exchange thereafter, by its notice dated January 10, 2002, purported to suspend trading in the equity shares of the noticee no. 1. No prior notice was issue to the noticee no. 1 herein. A notice was subsequently received which was duly replied to.
- (h) That some of the above facts were placed before the then Chairman of SEBI in the matter of the show cause notice dated June 04, 2002 issued to the noticees no.1 under the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Takeover Regulations) issues arising in the said proceedings are the same, were those arising in the present proceedings. As per noticee, though the hearing was concluded as far back as August 2002, the Chairman of SEBI is yet to give decision in the matter. Further, it has submitted that the proceedings in the present matter would amount to double jeopardy and/or prejudice these noticees' contentions in other proceedings and ought not to proceed further.
- (i) That since the noticee had applied for the delisting of its shares from the ASE during 1997-98, it had been advised that there was no need to apply to the ASE for listing of the shares allotted on preferential basis. Further, the noticees submitted that in the present proceeding SEBI has not challenged the legality of the allotment of the said shares.

- (j) That no application for in principle approval was made as the noticee believed that the same was not required in law. Further, it has been said that they were not aware of the circular dated March 08, 2001 nor was the same supplied by the stock exchanges to the noticee, nor was any amended listing agreement signed between the noticee and the stock exchanges. In any event, if there was any technical or trivial violation, no penalty should be imposed for the same.
- (k) That the decision taken for swap of shares was a prudent business decision as bio-technology was a sunrise industry at that time. The project report submitted by BBL was studied in detail by Shri Sarvesh Garg who had recommended the project to the Board of Directors. Further, it was submitted that it is not open for SEBI to challenge the commercial wisdom of the directors of any company including that of the noticee no.1, who are experienced businessmen.
- (l) That the minutes of meeting are not required to contain details of all the discussions which took place and reports/ documents which were considered by the Directors during the said meeting. It was said that the allegation made by SEBI that there was no discussion carried out about the project by the Board of directors of noticee no.1 is based upon conjectures and surmises. Further, it was said that the minutes of the meeting do refer the decision to allot the said shares to BBL. About Shri Prashant Rajgaria it was submitted that he was in charge of factory operations and also not present at the meeting held on 2nd October 2001 and accordingly his statement cannot establish that the investment made in BBL were never discussed by the Board of Directors of noticee no. 1.
- (m) That the minutes of EGM held on October 25, 2001, annual report as well as the notice in respect thereof reflect the decision to invest in BBL by way

of a swap arrangement upto a limit of Rs.100 crores. Hence, the findings in para 9(c) and 9(d) of the show cause notice is incorrect.

- (n) Further, it was also denied that there was any creation of imaginary project report or document. It was submitted that the project report submitted by BBL to notice no.1 was returned back to BBL at their request and that despite repeated requests BBL has not given a copy thereof to these noticees and it appears that the promoters of BBL have closed down their company.
- (o) Further, with reference to para 12 of SCN, it was submitted that the forms 2, 3 and 23 mentioned therein were duly filed with ROC. The alleged late filing does not affect the issue of the shares and the same requires only payment of additional fees to the ROC which was duly paid. It was also submitted that no incorrect statement had been made in the letter dated 31st October 2001, as no formality was pending for the said security. Regarding Form no.5 it was submitted that an undertaking had been given to BSE that the same would be filed. It had been filed on 31st December 2001 but due to some technical objections the same was resubmitted on 11th February 2002. It was also denied that the return of allotment filed with the ROC was delayed and further it was contended that SEBI has no jurisdiction to challenge the same particularly when the ROC had not challenged the same.
- (p) Further with reference to para 14 of SCN it was submitted that it was the CDSL which wrongly dematerialized the said shares in contravention of SEBI circular dated 8th March 2001 as they had expressly stated in their letter dated 26th February 2001 that the depository would all materialize the shares only after receiving the listing approvals from the stock exchange. It was also said that as the listing permission was not obtained from BSE, CDSL could not have dematerialized the said shares and that

the entire off-loading by BBL was a consequence of the failure on part of the CDSL. Further, it was submitted that as the said shares were dematerialized by CDSL, the shareholders were entitled in law to proceed on the basis that the said shares were freely transferable as shares are fungible.

- (q) Further, it was said that Mr. Murli Nair and Mr. Arvind Vasvani were not in employment during the relevant period of investigation and accordingly if they have done anything wrong then the same should be considered as beyond the scope of employment. It was denied that there was any change in management of BBL or that there was any nexus between DASL and BBL. Further, regarding Mr. Murali Nair, it was submitted that noticees were not aware of his dealing with BBL or the demat account allegedly opened by him on behalf of BBL. Further pertaining to 25,000 shares which were transferred to Mr. Murali Nair's account by Shri Sarvesh Garg it was submitted that these were their personal deal. It was also denied that noticees were aware of address furnished by Shri Murali Nair while opening his demat account and that Mr. Murali Nair was a conduit between BBL and DASL. Further, the noticees have seek to cross examinations the concerned persons including Mr. Murali Nair.
- (r) It was submitted that therefore the noticee has not violated provisions of Regulations 3, 4(a), 4(b), 4(c) and 4(d) of the FUTP Regulations or any violation of the listing agreement or SEBI circulars as alleged.
- (s) In response to a query raised during the hearing, by a subsequent letter dated November 6, 2006 the Advocates of DASL have apologized for a "typographical error" in the written submissions. The written submissions mentioned that Mr. Tare, a director of DASL, last attended a Board meeting in January 31, 2000 and thereafter resigned and therefore was not a director at the material point of time. Upon SEBI's request for

confirmation, by the aforesaid letter they have clarified that the last Board meeting attended by Mr. Tare was on August 20, 2002.

3.0 Consideration of issues

3.1 All preliminary objections raised by DASL, including issue of double jeopardy have been addressed by me in my earlier order dated June 22, 2006. The writ petition filed challenging the said order (WP No. 4479/2006) has been dismissed by the Hon'ble Indore High Court as mentioned above. Therefore all such issues are conclusively settled by order dated February 20, 2007 passed by the Hon'ble High Court and I do not find it necessary to consider those issues again.

3.2 I note at this point that BBL, the other principal party to the transaction and its directors and a few other parties such as Coverage & Consultants Ltd. have not co-operated in the investigation. They have not responded to various summons issued by the investigation team and consequently, prosecution proceedings and proceedings under Chapter VIA of the SEBI Act have been initiated against them.

3.3 I have taken into consideration the SCN, the submissions made by DASL's Advocates at the time of hearing and the written submissions made by them. My findings are as under:

Preferential allotment to BBL

3.4 Pursuant to an alleged MOU entered between DASL and BBL on September 15, 2001, they made preferential allotment of 10 crore shares to each other on swap basis. The allotment made by DASL to BBL was huge with reference to its existing capital, as seen from the table given below:

Till 11.07.1994 – 62.25 lakh shares at Rs 10 per share	=	Rs.6.225 crore
On 06.12.1999 – Allotment of 11 lakh shares at Rs 10 per share on a preferential basis to its promoters and associates namely Vargin Finance Pvt. Ltd., Sarvesh Garg and Rita Garg.	=	Rs. 1.10 crore
On 29.10.2001 – Allotment of 10 crore shares at Rs. 10 per share on a preferential basis to Bonanza Biotech Ltd.	=	<u>Rs. 100 crore</u> <u>Rs. 107.325 crore</u>

Whereas 62.25 lakh shares are listed at all the stock exchanges named above, the remaining **10.11 crore** shares issued on a preferential basis were not granted listing permission at BSE though they are listed at MPSE. No listing application in that regard was made with ASE.

It is not disputed that 10 crore equity shares of DASL were allotted on preferential basis by DASL to BBL on October 29, 2001 for which the consideration was 10 crore equity shares allotted by BBL to DASL. The face value of both the shares were Rs.10/-, which entailed an amount about Rs.100 crore through this transaction. It ought to be noted that the acquisition of BBL shares amounted to more than 80% of BBL's post issue equity share capital.

3.5 The question is whether this was a genuine transaction backed by 'prudent commercial sense' or at least passable commercial sense or whether it was merely a ruse to offload unlisted shares of DASL to unsuspecting investors. The allotment made to BBL was to an extent of about 14 times of the pre-issue equity capital of DASL. The only consideration was a stake in BBL of 10 crore shares. By any yardstick, this was a huge investment by DASL, having regard to its circumstances. As such, it would be expected in the normal course that the Board of Directors of DASL would have had compelling or at least plausible commercial reasons for making such a huge investment. Any prudent or honest Board would have taken the investment decision on the basis of tangible material showing strong possibility of resultant benefit to the company. It should also be noted that DASL had by this transaction conceded

more than 93% of its own capital to BBL. Further, it is seen from the purported MOU dated September 15, 2001 between DASL and BBL that (all are reciprocal conditions) –

- a) DASL agreed not to appoint any director on Board of BBL;
- b) DASL agreed not to interfere in the management or policy making powers of BBL;
- c) DASL agreed not to do anything which may result in change in composition of BBL's Board;
- d) DASL agreed to exercise its voting power in BBL in accordance with directions of BBL and its promoters.

To make an investment of about Rs.100 crore and that too with such kinds of disabilities would require still more compelling reasons.

3.6 Bearing this in mind, I come now to the reasons advanced by DASL and its directors for going ahead with the investment of about Rs.100 crore in BBL. In a statement given by the CMD of DASL to SEBI on January 28, 2004, he said that the reason was that BBL was to come with a biotech project. He further stated that the project report was given to them in August 2001 and was discussed in the Board meeting of DASL held on October 2, 2001.

3.7 I have perused the copies of relevant documents where brief outline of such project report or at least mention of the project ought to have, in the normal course of events, found place. I find that the minutes of the meeting of the Board of DASL held on October 02, 2001 does not make any mention of the project report. No other minutes of the Board, showing discussions about BBL's project was produced before SEBI, despite the CMD's assurance to produce them. The fact that one of the directors, Shri Prashant Rajgarhia

denied knowledge about the activities of BBL in his statement to SEBI further indicates that the project report was not discussed at any meeting of the Board of directors. It is submitted by DASL that Shri Prashant Rajgarhia was a director in charge of factory operations, did not attend the Board meeting on October 2, 2001 and therefore did not know about the project of BBL. This explanation seems to be an obvious afterthought. Further, on perusal of the certified true copy of the purported Board minutes submitted by DASL (copy of which was annexed with the SCN) its genuineness seems doubtful. The resolution contained in the purported Board minutes reads as under:

“Preferential Allotment of shares:

RESOLVED THAT in terms of Section 80, 81 and all other applicable provisions, if any, of the Companies Act, 1956 (including any statutory modification(s) or re-enactment thereof, for the time being in force) and in accordance with the provisions of the Articles of Association of the Company and subject to approval of members of the Company and Listing Agreements entered into by the Company with the Stock Exchanges, where the shares of the Company are listed and subject to such consents and approval from Securities and Exchange Board of India (SEBI) and subject to the consent of other statutes as applicable and subject to such approval, consents, permissions and sanctions as may be necessary from appropriate authorities or bodies which may be agreed to by the Board of Directors of the Company (hereinafter called the “Board”), and / or a duly authorized Committee of Directors thereof for the time being exercising the powers conferred by the Board of Directors (hereinafter called the “Committee”), consent of the Company be and is hereby accorded to the Board to offer / issue / allot 10,00,00,000 (Ten Crore only) equity shares of the face value of Rs.10/- each at a par value of Rs.10/- per share on a preferential basis, to Bonanza Biotech Ltd. having its registered office at 203, Apollo Tower, 2 MG Road, Indore – 452 001 as a consideration for the acquisition of equity shares of Bonanza Biotech Ltd. under the swap of equity shares on such terms and conditions as mentioned in the Agreement dated September 15, 2001 entered between the both the parties

RESOLVED FURTHER THAT the equity shares so issued shall rank pari-passu with the existing equity shares of the Company and that they shall be entitled to receive the dividend same as of the old equity shares of the Company.

RESOLVED THAT an Extra Ordinary General Meeting of the members of the company be called and held on 25th October 2001 at 12.30 p.m. at the Registered Office of the company to:

- i) increase the authorized the share capital.
- ii) alter the Articles of Association.
- iii) issue further shares to Bonanza Biotech Ltd. (formerly known as Reliable Plastics Ltd.)

And that any of the directors of the company be and is hereby authorized to issue the notices in respect thereof as per the draft notice as placed before the meeting duly initialed by the Chairman for the purpose of identification.

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board / Committee be and is hereby authorized to do all such acts, deeds, matters and things, as it may in its absolute discretion deem necessary, proper or desirable and to settle any question, difficulty or doubt that may arise in regard to the offer/issue, allotment and utilization of the proceeds and further to do all such acts, deeds, matters and things and to finalize and execute all documents and writings as may be necessary, proper, desirable or expedient, as it may deem fit.” (emphasis supplied).

The first, second and fourth paragraphs of the resolution are identically worded as the subsequent EGM resolution, which was purportedly passed in the EGM held on October 25, 2001. The wordings of the resolution read as if it is the decision of the General Meeting rather than the Board. The resolution further authorizes the Board / Committee to do certain things as if it were passed by the General Meeting, which would be totally out of place in a Board resolution. Further, the minutes contain no mention of which directors were present at the meeting and particularly whether leave of absence was granted

to Shri Prashant Rajgarhia. All these facts taken together lead to the conclusion that the minutes are fabricated, and that either the Board meeting did not take place on October 2, 2001 as contended by DASL or even if it were held, the purported biotech project of BBL was not discussed therein.

3.8 According to DASL, the proposed investment of about Rs.100 crore in BBL through swap allotment was approved by its shareholders in an EGM held on October 25, 2001. I have perused the EGM notice and the explanatory statement annexed thereto and find that there is no justification given for the huge investment proposed in BBL, apart from a bald assertion that the proposed investment will be in the interest of shareholders of DASL. DASL contends before me that there was no requirement to mention any specific project when the fact of proposed allotment was mentioned. This explanation is not in consonance with requirements of section 173(2) of the Companies Act, 1956. There is also no mention of the activities of BBL, much less of any biotech project or any report of such project. In the subsequent Annual Report of DASL for the year 2001-2002 also, there is no mention of the biotech project of BBL in the Directors' Report or in the Management Discussion and Analysis Report (MDAR). The point is not that SEBI is trying to enforce legislative provisions relating to explanatory statement, directors report etc. It is rather than all these facts taken together show that the explanation of DASL regarding the purported project of BBL is a sham and an afterthought. No such project was in contemplation at the time of allotment and the story was cooked up in face of regulatory intervention. In the absence of any other reason advanced by DASL, the only objective of the swap allotment seems to be to eventually offload unlisted shares of DASL to innocent investors.

3.9 In this context, the issue of purported resolution passed under section 372A of the Companies Act by EGM of DASL held on October 25, 2001 is also relevant. As is obvious from the EGM notice filed by DASL, no such resolution

was in the agenda of the meeting. DASL has not addressed this issue in its written submissions, except for a bare denial that documents were not cooked up. It has not produced any supporting evidence such as Form 23 required to be filed with the Registrar of Companies in respect of such resolution. Thus, it is obvious that no such resolution was actually passed and it was fabricated in the face of SEBI investigation. The conclusion is that DASL and BBL were in haste to get the shares allotted and offloaded and therefore did not care a fig for statutory compliances.

3.10 I further note that DASL has failed to submit a copy of the alleged project report despite consistent follow-up by SEBI. They had stated that the project report being a confidential document was returned to BBL and had undertaken to submit a copy to the investigation team after getting it from BBL. In the present proceeding they have taken a stand that BBL did not give them a copy despite repeated requests “as it appears that the promoters of BBL have closed their company.” I find this explanation to be fanciful, to say the least. It defies comprehension as to how a company which invests about Rs.100 crore in another company on the faith of a biotech project to be undertaken by it has totally neglected to retain any details of the proposed project and has placed itself in such a position that it is unable to call for information from the investee company. This has to be further seen in light of the fact that subsequent to the swap allotment, BBL had become a subsidiary of DASL with the latter holding a stake of more than 80% in the former. It is also further inconceivable as to how the subsidiary could be ‘closed’ without DASL’s knowledge and complicity when the holding company had invested Rs.100 crore therein and owned a stake of more than 80% in it. Even assuming that the Board of BBL had ‘closed’ down the company without knowledge of DASL, DASL has not stated what further action was taken by it to salvage its huge investment as a holding company and no action seems to have been taken to that end. The only plausible explanation of such facts in the circumstances is that once the exercise of off-loading of shares to

innocent investors (which was partly stalled by actions of SEBI and BSE) reached a point where further progress was not possible, BBL wanted to exit the scene with complicity of DASL, for the following reasons:-

- a) to avoid regulatory action against itself and its officers;
- b) to stall the investigations by SEBI by not answering summons and thereby concealing valuable information could have been unearthed otherwise by SEBI, which might then have incriminated not only BBL, but also the other principal party, DASL among various other parties.

I further note that SEBI was unable to obtain a copy of the alleged project report, if any, from BBL also as they never turned up before the investigation team despite various summons issued to them.

3.11 DASL has further stated before the investigation team that no independent professional advice was sought on the proposed investment. This is also unusual considering the size and business of DASL and the size of the proposed investment. DASL has asserted before me [para 14 of DASL written submissions] that business decisions are taken on the basis of application of one's own mind, perceptions and gut feelings about the prospects of any industry. This explanation would have been acceptable had the transaction been one of usual size undertaken in the normal course of business of the company. Any investment decision of significant size would not in the normal course of business be taken on the basis of perceptions and gut feelings, much less an investment of about 14 times the pre-issue capital of the company. This explanation betrays, at best, worst governance in the company. However, it does not stop there and as borne out by facts as found in this order, such contention pointing to such a high degree of irresponsibility is to hide the sinister designs of the managements of DASL and BBL and of other parties to defraud innocent investors, by issuing and off-loading unlisted

shares. They have now taken a position before me [para 5(f) of DASL's written submissions] that a valuation report was taken from a reputed chartered accountants firm regarding shares of DASL and BBL prior to making the investment. This is contradictory to the stand taken by DASL before the investigation team and even to the stand taken in the same written submissions at para 14 as mentioned above. Further, no copy of such valuation report has been produced before me. Thus, I see no reason to attach any weight to this contention.

3.12 DASL's representatives further contend that SEBI cannot challenge the commercial wisdom of the directors of any company. However, when commercial judgment (or lack of it, as noted above) is used as a shield to camouflage violations of the securities laws, SEBI no doubt has the power to remove the camouflage and look at the real state of affairs, in order to adjudicate / determine the alleged violation of securities laws.

3.13 It was further admitted, as alleged in the SCN, that DASL did not apply for or obtain in-principle approval from the stock exchanges where its shares were listed before making the preferential allotment to BBL. This is in violation of SEBI Circular dated March 8, 2001 and clause 24(a) of the Listing Agreement. DASL contends before me that they were not aware of the SEBI Circular and the same was not furnished to them by the stock exchanges and that no amended listing agreement was signed between them and the exchanges. As regards submission that the SEBI circular dated March 08, 2001 was not communicated by exchanges, benefit of doubt can be given to the noticees. However, I find that the requirements of clause 24(a) of the listing agreement as amended pursuant to SEBI Circular dated March 8, 2001 are not trivial or technical ones. They are very substantial ones designed for protection of investors. Had they been followed in the present case, at least one of the exchanges would have detected the irregularities and stopped the proposed allotment and the entire off-loading would have been impossible.

3.14 The delays in filing Form 5 and Form 2 with the Registrar of Companies are admitted. They contend that the additional fee for late filing was paid and the ROC did not take any objection to the late filing. Again the point to be noted is not the alleged violation of sections 94 or 75 of the Companies Act as the case may be. It is rather the haste with which the allotment was carried out in order to facilitate off-loading of shares (as would be evident from the whole conspectus of facts found in this order), which has resulted in all these violations of regulatory requirements that has to be noted.

3.15 DASL has sought to distance itself from the dematerialization of its shares by CDSL. They contend that it was a mistake on part of CDSL to have dematerialized the shares without ensuring listing and trading permission from all stock exchanges, where the shares were originally listed. However, the fact remains that no depository would dematerialize shares unless an application is made on that behalf by an issuer company. Thus, DASL cannot feign ignorance about such irregular dematerialization. The question therefore is why DASL made an application for dematerialization when it clearly knew that listing and trading permissions were not given by all the three concerned stock exchanges. No answer has been provided by DASL. Taken in light of the entire facts, the only reason which emerges is that the application was made in furtherance of a grand design to offload unlisted shares to unsuspecting investors. I note in this regard that SEBI has already taken requisite action against CDSL for the hasty and irregular dematerialization.

3.16 In the SCN it was alleged that DASL issued the same 10 crore shares both in the physical form (in the form of a jumbo share certificate) and in the dematerialized form. In the written submissions, DASL has contended that they had merely issued the jumbo certificate and were not involved in the demat credit given by CDSL to BBL's demat account. This however, is preposterous and contrary to other submissions made by DASL itself (even

those recorded in the previous paragraph). As noted above, the depository has no authority to give demat credit of shares freshly issued except in accordance with a corporate action intimated by the company. The depository also gets a payment for such corporate action from the issuer company. Further, as mentioned in the SCN, Ankit Consultancy, the Registrar and Share Transfer Agent of DASL had in its statement made to SEBI submitted that DASL had approached them for dematerializing the said 10 crore shares. Since, this is the role normally conceived of a Registrar and Share Transfer Agent and it is an indisputable fact that demat credit was in fact given to the extent of 10 crore shares to BBL's demat account, I have no reason to disbelieve this statement. There can be no conceivable legitimate purpose for duplicating issuance of the same shares. In the absence of any valid explanation for the dual issuance of the same shares and that too in such a huge quantity, the only inference that can be drawn is that of fraudulent intent. In this case, the conduct is all the more blameworthy as the dematerialization was done with the sole conceivable objective of off-loading the dematerialized unlisted shares to innocent investors by exploiting a loophole in the systems whereby they would become fungible with and indistinguishable from the other validly listed dematerialized shares.

Nexus between DASL, BBL and other entities

3.17 It is an admitted fact that common address was given for Mr. Murali Nair, DASL and BBL while opening accounts with CDSL. All these persons have sought to explain away the uncanny coincidence on flimsy reasons, which are not acceptable.

3.18 It is further an admitted fact that DASL held more than 80% of the equity share capital of BBL post the preferential allotments. As such it was the single largest shareholder of BBL and cannot distance itself from activities of BBL.

3.19 Further, Shri Arvind Vaswani who was an employee of DASL was appointed on the Board of BBL. His name was not appearing originally in the list of directors furnished by BBL, but his presence on the BBL Board was subsequently known from papers filed with the ROC which have been signed by Shri Vaswani as a director of BBL. Now DASL has taken a stand that Shri Vaswani quit the services of DASL in October 2001 and they are not concerned with his subsequent placement as an independent director of BBL. This explanation is an obvious afterthought. Further, it is seen from a BBL Board resolution attached to the Member Client Agreement Form entered into between BBL and its broker, CD Equisearch Ltd. that the resolution was purportedly passed on June 5, 2001 and signed by Shri Arvind Vaswani as director of BBL. The agreement is dated October 11, 2001. Thus, it is sufficiently clear that Mr. Vaswani was the director of BBL from June, 2001 or at least before October, 2001.

3.20 Further, the role of Mr. Murali Nair in the off-loading process is very prominent. He was an employee of DASL at the material time and had also acted for BBL on various occasions.

3.21 DASL has in its written submission stated that Mr. Murali Nair was not in the employment of DASL during the relevant period of investigation and accordingly his activities should be considered as out of the scope of employment. This contention of DASL is however not borne out by the facts. In the Annual Report of DASL for the year 2001-02 it has been mentioned that Shri Murali Nair was designated as the Executive Officer (Secretarial) of DASL. This finds place under the head 'Report on Corporate Governance' which was authenticated as late as August 29, 2002 by the statutory auditors. It may be recalled that by this date all material transactions of this case had taken place. Therefore, the irresistible conclusion is that Shri Murali Nair was in the employment of DASL at all material points of time. During the same period, Mr. Murali Nair also acted on behalf of BBL with various brokers.

3.22 Further, Mr. Murali Nair in his sworn statement dated November 13, 2003 had stated as follows: “I am solely in charge of the transfer of shares in the physical form to the RSTA, Ankit Consultancy Pvt. Ltd. for their eventual dematerialization on behalf of DASL, Bonanza Biotech Ltd., Vargin Finance Pvt. Ltd. and Shri Sarvesh Garg. I used to follow up with Ankit Consultancy on behalf of the aforementioned entities.” Regarding the reason for maintaining two depository accounts his response was as “Bonanza Biotech Ltd. (Director, Shri Sharad Gujrathi) had advised to open the CDSL account with SBI Indore and DASL (Shri Sarvesh Garg, Managing Director) had advised to open the NSDL account with Arihant Capital Markets Ltd.” It is inconceivable as to how an experienced professional such as Mr. Murali Nair (who was designated as Executive Officer (Secretarial) in DASL) would act merely as a name lender to a DP account, given the patent illegality of and the risks involved in such activity, except in furtherance of a larger illegal purpose. It is further clear that the relevant CDSL DP account of Mr. Murali Nair was opened with assistance from BBL. Further, as is clear from the extract of his DP account statement extracted in para 2.1(k), BBL had transferred 50 lac shares to Mr. Murali Nair in order to facilitate the offloading. Mr. Murali Nair in turn transferred 11 lac shares to Manoj Ganeriwala and DG Goenka. However, in the meantime BSE suspended trading in the BSE scrip, thereby foiling the offloading plans of BBL and Mr. Murali Nair and eventually Mr. Murali Nair transferred 49 lac shares back to BBL.

3.23 Mr. Murali Nair, further in his statement stated as follows, “The Director of BBL had assured me that shares of DASL will be transferred to my account, hence the DP account with CDSL was opened in my name. As for the NSDL account, Shri Sarvesh Garg, Managing Director of DASL, had to transfer 25000 shares of DASL to my account, hence this account was opened. These shares were transferred to my account for which no consideration was paid by me. The shares were transferred to me in good faith. It was

understood with Mr. Sarvesh Garg that I will pay him about Rs.5 to Rs.6 per share after selling the same in the market when the price of the shares go up.” DASL has contended that this transaction was personal between Mr. Sarvesh Garg and Mr. Murali Nair. Mr. Murali Nair had further stated in his statement that he was drawing Rs.3500 per month as consultancy fees from BBL and Rs. 2500 per month as consultancy fees from DASL.

3.24 I find that Yogesh Kedia, Director of D. G. Goenka Equities Ltd., had stated with reference to the 50 lac shares of DASL transferred to them by BBL that these shares were transferred on their account at the instruction of Mr. Murali Nair and M/s Vargin Finance P. Ltd. and that these shares were transferred to their account from BBL in respect of their margin requirements and future market obligations.

3.25 Further, 50 lac unlisted shares of DASL had been transferred to the joint demat account no. IN300888/13162987 of Manoj H Ganeriwala and Madhu M Ganeriwala, who are husband and wife. When Manoj Ganeriwala was asked about the reasons for these transfers he had stated that, “ Mr. Nair had asked for my DP accounts and that for these shares he had not paid any consideration either monetary or non monetary. Further, after nine days of this transfer i.e. on November 22, 2001 the said 50 lac shares were transferred from this account to M/s Pinnacle Finstock Pvt. Ltd. For this transfer also he said that , “ I am not aware of M/s Pinnacle Finstock Pvt. Ltd and I had transferred the shares as per instructions of Mr. Murali Nair.”

3.26 Again for the transfers dated January 29, 2002, when M/s Coverage and Consultants and M/s Pinnacle Finstock has transferred in the demat account of Manoj Ganeriwala around 2.78 lac and 47.12 lac of shares respectively, the response of Manoj Ganeriwala was as these were done on the instruction of Mr. Murali Nair. The sum and substance of these facts is that Mr. Murali Nair was closely associated both with DASL and BBL – with the former as the

Secretarial Executive and with the latter as a consultant. He had opened the demat accounts at the behest of both of them and was actively involved in the offloading activities of BBL and other entities.

3.27 I find that Mr. Murali Nair has also admitted in his written submissions that he had interacted with various brokers on behalf of BBL and its directors as per the instructions received by Mr. Sharad Gujrathi, director of BBL. At this point it may be noted that Mr. Murali Nair had in his written submissions submitted before me in separate proceedings initiated against him, stated that he started his own consultancy since November 1, 2001 and during the relevant period he was not an employee of DASL. This submission is not sought to be relied upon in this order, but is mentioned only to show the similarity in submissions made by him with those made by DASL.

Transactions subsequent to the preferential allotment

3.28 For better appreciation of the events it is useful to have a chronological outline of the events, which may be given as under:

Date	Event
29.10.2001	Allotment of 10 crore DASL shares made to BBL on swap basis. Jumbo share certificate issued by DASL to BBL for the said shares.
01.11.2001	DASL makes listing application to MPSE in relation to said shares.
05.11.2001	MPSE grants listing permission for the said shares.
10.11.2001	CDSL credits 10 crore DASL shares to the demat account of BBL
13.11.2001	BBL makes substantial off-market transfers of DASL shares to two parties, i.e. 50 lakh shares to the joint account of Mr. and Mrs. Ganeriwala and 50 lakh shares to one M/s DG Goenka Equities Pvt. Ltd. (each transfer amounting to more than 80% of the validly listed capital of DASL)

	Similarly huge quantities were transferred by BBL to various other entities on various other dates as given in detail at para ____.
20.12.2001	DASL makes listing application to BSE.
08.01.2002	CDSL freezes BBL's demat account.
14.01.2002	BSE suspends trading in the DASL shares.
	Subsequently, various parties return the shares transferred to them with a view to eventually return them to the account of BBL. However, as mentioned in para 2.1(l) a total of 98,21,074 shares remain unaccounted for.

3.29 It ought to be noted at this point that the off-loading was done by exploiting a loophole in the systems whereby the shares were dematerialized and intermingled with other validly allotted shares floating in the market. Once dematerialized, the unlisted shares were fungible with and indistinguishable from other validly listed shares. This massive off-loading was made possible only because DASL made an application for demat credit to CDSL despite knowing fully well that listing and trading permission were not given to the said 10 crore shares by all the concerned three exchanges. Thus, DASL was instrumental in getting the 10 crore shares dematerialized. This was despite the fact that the same 10 crore shares had already been issued in the physical form (jumbo certificate) to BBL. This is a highly undesirable act which cannot be explained on any other basis other than the anxiety of DASL to enable BBL to offload the unlisted shares which could have been further perpetuated but for regulatory detection. In this manner, DASL has directly aided the off-loading by BBL in pursuance of their common designs, which was to defraud investors.

3.30 As noted in the SCN, flimsy reasons have been given by BBL for the transfers made to various parties, which have been contradicted by some parties. As alleged by SEBI in the SCN, the shares were transferred by BBL to various parties with a view to ultimately off-loading them to innocent

investors through trading platform of BSE. In this, they were assisted by DASL through involvement of Mr. Murali Nair and Mr. Vaswani, at various stages. When trading in the DASL shares was suspended by BSE, the various parties tried to restore the status quo ante by returning shares to BBL to the extent possible and to exit the scene with a view to escape regulatory action.

3.31 As regards the objections relating to quality of evidence relied upon, such as third party statements, I find that evidence is record based and copies of the same have been furnished to the noticees. I further find that these statements and reports are only corroborative of the other main facts which are prima facie established otherwise.

Summation and conclusion

3.32 The facts in this case have to be seen in their totality. The fraudulent allotment by DASL to BBL (particularly allotment of same shares both in demat as well as physical forms) and the subsequent off-loading of those shares by BBL and other entities to unsuspecting investors has to be seen as part of the same transaction and a single grand design fitted to defraud investors. From the point of signing of MOU between DASL and BBL regarding the proposed swap allotments on September 15, 2001 till the suspension of trading by BSE on January 14, 2002, close linkages can be found between DASL and BBL, as noted in this order.

3.33 The following are the principal findings in this order irresistibly pointing to the above grand design:

- a) DASL did not have any plausible commercial reason for making a huge investment of about Rs.100 crore in BBL, which too subject to various disabilities as mentioned in the MOU dated September 15, 2001. The

alleged biotech project of BBL was a story cooked up in the face of SEBI investigation.

- b) DASL fabricated the minutes of the Board meeting allegedly held on October 02, 2001. It also fabricated a resolution under section 372A of the Companies Act purportedly passed in the EGM held on October 25, 2001. There was no reason why these had to be fabricated other than to give a false commercial colour to a transaction designed to deceive investors.
- c) DASL has contended that directors of BBL have 'closed' BBL. If DASL and its directors had been acting commercially, there is no conceivable reason why they would allow BBL to be 'closed' and be silent spectators to their investment of about Rs.100 crore therein going down the drain. This is particularly when BBL was their subsidiary and 80% stake therein was held by DASL. Any subsequent action to salvage the investment was also conspicuous by its absence. The only reason could be that if BBL had continued to exist and participated in SEBI investigation, they would have spilt some further beans on the involvement of DASL and its directors, which was avoided by its alleged 'closure'.
- d) DASL issued a jumbo certificate to BBL for 10 crore shares to BBL pursuant to EGM resolution dated October 25, 2001. Subsequently, it also made an application to CDSL to make demat allotment (credit) of the very same shares to BBL's demat account. DASL made an application for such demat credit to CDSL, knowing very well that listing and trading permissions were not given by all concerned stock exchanges. The only conceivable reason for such demat credit when the relevant physical certificate was already in existence is to facilitate off-loading of the unlisted demat shares (which are fungible with and indistinguishable from other validly listed shares) by BBL and other entities. Thereby DASL actively aided the off-loading of unlisted shares in the BSE to unsuspecting investors by BBL and other entities.

- e) In their anxiety to make the demat allotments expeditiously in furtherance of the grand design to offload the shares, DASL overlooked regulatory requirements such as those of sections 75 and 94 of the Companies Act (filing of Form 2 and Form 5 within the specified time).
- f) Undisputed records show that BBL offloaded about 6 crore (out of the 10 crore) DASL shares allotted to it through various entities. In this connection, DASL's complicity is evident in view of the fact that BBL was a subsidiary of DASL and DASL had an 80% stake in BBL.
- g) Shri Murali Nair who was the Secretarial Executive of DASL during the relevant period dealt with certain brokers on behalf of BBL in the course of off-loading the shares. He also gave instructions to Mr. and Mrs. Ganeriwala regarding movement of the unlisted shares of DASL through their demat account.
- h) DASL claimed that Shri Murali Nair resigned from their services in October 2001. This is however contradicted by the Annual Report of DASL for the year 2001-2002, wherein Shri Murali Nair has been shown as the Executive Officer (Secretarial) in the Corporate Governance Report, which has been authenticated as late as August 29, 2002 by the statutory auditors. Thus, DASL's attempts to distance itself from activities of Shri Murali Nair do not pass muster.
- i) DASL also claimed that Shri Arvind Vaswani had left services of DASL in October 2001 and thereafter he joined the Board of BBL. This has been contradicted by the fact that Shri Vaswani had authenticated a resolution dated June 05, 2001 attached to the member client agreement form dated October 11, 2001 of BBL with a stock broker CD Equisearch Ltd. in the capacity of a director of BBL. Thus, Shri Vaswani was an employee of DASL when he was also on the Board of BBL. During such time, he also dealt with CD Equisearch Ltd., which was one of the brokers through whom BBL offloaded the unlisted shares in the BSE, on behalf of BBL.

3.34 The next question is whether the conduct of DASL and its directors falls within the prohibition of the PFUTP Regulations, 1995. As regards whether the above conduct violates regulations 3 or 4 of the PFUTP Regulations, 1995, it is necessary to refer to the provisions [and to regulation 2(1)(c) which is required to understand regulation 3]:

“Definitions

2.(1) In these regulations, unless the context otherwise requires -

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

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

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

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

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent;

and "fraudulent" shall be construed accordingly.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Prohibition of certain dealings in securities

3. No person shall buy, sell or otherwise deal in securities in a fraudulent manner.

Prohibition against Market Manipulation

4. No person shall -

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

- (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;
- (c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;
- (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;
- (e) pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole object of inflating, depressing, or causing fluctuations in the market price of securities."

3.35 BBL and other entities who offloaded the unlisted shares on the trading floor of BSE, impliedly represented that these were listed shares which could be validly delivered in the BSE as per its bye-laws. The clearing house of BSE and various counter parties to the transactions, being innocent investors, were unsuspecting and took delivery of such shares. As noted above, as the shares were in the dematerialized form, they were indistinguishable from other validly listed shares of DASL. DASL was integrally connected in the transaction, whereby the unlisted shares were allotted, dematerialized and offloaded as noted in this order. Further, all transactions starting from entering of MOU between DASL and BBL and up to off-loading of shares by BBL, actively aided by DASL, are an integral part of a grand design to defraud investors by saddling them with unlisted shares. It cannot be lost sight of that BBL was 80% subsidiary of DASL. Thus, their act is fraudulent within the meaning of regulation 2 (1)(c)(1) and (2) of the PFUTP Regulations. The defrauded parties are the numerous investors who were counter parties to the transactions and the BSE. In this view of the matter, I hold that DASL and its directors are guilty of violating regulation 3 of the PFUTP Regulations, 1995.

3.36 I, further, note that at BSE the scrip was quoting at Rs. 4.25/- as on 12.10.01 with a volume of 1800 shares. However, on November 7, 2001 the price of said scrip moved up and reached to the peak of Rs. 11.20 and later it

came down to Rs. 1.65 as on 11.01.2002. from the aforementioned facts, it can safely be concluded that the involvement of DASL in transactions of its unlisted shares was with the intention of artificially raising the prices of its shares and then off-loading of the unlisted shares to the innocent investors and to defraud them. Further, since the off-loading of unlisted shares can not be said to be genuine trade transactions, these activities of the noticees also fall within the purview of provision 4(c) PFUTP which reads as, “indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions”. In this view of the fact, I hold that the noticee company and its directors have also violated the regulations 4(a) and (c) of the PFUTP Regulations, 1995.

3.37 I note at this point that DASL has referred to separate proceedings which SEBI initiated against them for alleged violation of the Takeover Regulations. They have submitted that they had appeared before the Former Chairman SEBI in this regard and had also filed written submissions. I note that a decision has been taken by SEBI to keep those proceedings pending till conclusion of the present proceedings as their outcome may turn on the outcome of the present proceedings. Moreover, since these proceedings are for different violations, I do not find it necessary to dwell on the aspect further.

4.0 Order

4.1 The general course of events following the swap allotments made by DASL have undermined investor confidence in the demat system and in the integrity of the securities market in general. As seen above, the noticees have played an important part in the allotment, dematerialization and subsequent off-loading of the unlisted shares of DASL in BSE and are an integral part of the massive fraud played on innocent investors.

4.2 As noted above, the noticees have violated regulations 3 and 4 of the PFUTP Regulations, 1995. I therefore in the exercise of power conferred upon me by sections 11 and 11B of the SEBI Act, 1992 hereby direct that DASL and its directors, namely Shri Sarvesh Garg, Smt. Rita Garg, Shri Prashant Rajgarhia and Shri Rajendra Tare shall not access the capital market, or buy, sell or deal in securities in any manner directly or indirectly for a period of seven years from date of this order.

4.3 This order shall come into force immediately.

Mumbai
March 06, 2007

T.C. NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA