

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: G. ANANTHARAMAN

ORDER UNDER SECTIONS 11 AND 11B OF THE SEBI ACT, 1992

**IN THE MATTER OF Mr. MANOJ GANERIWALA AND Mrs. MADHU
GANERIWALA**

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 broad course of events in the matter is 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 pre-issue paid up capital of DASL. 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 pre-issue paid up capital of BBL before the allotment. There was no exchange of cash between the two.
- b) DASL made application for listing the said shares allotted to BBL to MPSE and later to BSE. The MPSE granted listing permission albeit with undue haste and without exercising due diligence. However, it did not grant trading permission. The listing application which was made

subsequently to BSE was kept pending by it, as it apprehended that DASL would have committed certain violations of law in the process.

- c) On the basis of listing permission given by MPSE, the Central Depositories Services Ltd. (CDSL), a registered depository, dematerialized these DASL shares and credited them to the beneficial owner account of BBL.
- d) After the allotments were made, a major chunk of the shares allotted by DASL to BBL were offloaded by BBL through a network of entities including C&C in the trading platform of the BSE even though these shares were not listed on BSE. Such offloading was contrary to provisions of the BSE bye-laws and constituted bad delivery on the exchange. However, neither the BSE Clearing House nor any of the other parties to the trade could detect this illegality, since the shares were in the dematerialized form and thereby fungible with other legally allotted shares. As a result, a number of innocent investors who purchased such unlisted shares on the BSE were defrauded and saddled with shares which could not be legally sold on the BSE.
- e) When this came to the notice of SEBI and BSE, the demat account of BBL was frozen after recovering a portion of the shares that were offloaded by it.
- f) Upon the above coming to its notice, BSE suspended trading in the DASL's shares from January 14, 2002. Upon instructions from SEBI, BSE also annulled all transactions in DASL shares allotted to BBL which had taken place on the exchange till that date. The annulment was subsequently set aside by the Mumbai High Court by an order passed on February 28, 2003 in W.P. No. 209 of 2003 and connected matters (a batch of Writ Petitions filed by aggrieved stock brokers of BSE), mainly on the ground of intervention of innocent third party interests and the matter was remanded to BSE's Governing Board for deciding the same afresh after giving a hearing to the Petitioners. The annulment order was subsequently reversed by the Governing Board

itself as they found that the interest of innocent third parties i.e investors would otherwise be affected.

- g) Subsequently, investigations were initiated by SEBI to probe into the alleged malpractices committed by DASL, BBL, C&C and other entities.

1.2 During the course of the aforesaid investigations, summons was issued to DASL and BBL to appear before the Investigating Authority. However, BBL 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. 150/2004). DASL had also challenged a similar summons issued by SEBI before the same Court (WP No. 673/2004). Both the writ petitions were dismissed by the Hon'ble Court by orders dated March 04, 2005 and directed SEBI to ensure expeditious completion of investigation and further DASL and BBL were also directed to co-operate in the investigation so as to enable the Investigating Authority to complete the same expeditiously.

1.3 The findings of investigation 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. Coverage & Consultants Ltd. (C&C) was also found to have played a very instrumental role in offloading of these unlisted shares of DASL into the market. Pursuant to this SEBI issued show cause notices (SCN) to DASL, BBL, C&C and other entities suspected to be involved in the transactions requiring them to show cause as to why appropriate directions should not be passed against them. The common show cause notice issued to BBL, C&C and their directors was dated June 30, 2005. The same SCN was also addressed to one Mr. Deep Trivedi, who allegedly dealt on behalf of C&C with its broker and one M/s Parshwa Finance, who was allegedly an unregistered sub-broker who indulged in offloading the unlisted shares.

- 1.4 DASL, instead of replying to the show cause notice, raised certain objections challenging SEBI's jurisdiction and further sought inspection of certain documents vide its letters dated July 21, 2005 and August 31, 2005. SEBI, thereupon replied vide letters dated August 22, 2005 and September 19, 2005 that the jurisdictional objections, if any, might 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 with a direction that 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.
- 1.6 In compliance with the directions of the Hon'ble Court, SEBI had disposed of DASL's preliminary objections, including the jurisdictional question, by an order dated June 22, 2006, after granting an opportunity of hearing to DASL. It was held that SEBI had jurisdiction in the matter and that the preliminary objections raised by DASL were not sustainable. It 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). 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.

- 1.8 Accordingly SEBI passed final order against DASL on March 6, 2007. On the same date SEBI passed order against BBL also wherein BBL was found to have violated Regulation 3 and 4 of PFUTP Regulations, 1995. The present proceedings against Mr. and Mrs. Ganeriwala have also been delayed due to the same reasons that occasioned delay in proceedings against DASL, as one of the charges in the show cause notice under consideration was that they were accomplice to the management of BBL in attempting to perpetuate and propagate the fraud of offloading unlisted shares in the market.

2.0 Show cause notice, hearing and reply

- 2.1 In the light of the above, based on the finding in the investigation report, show cause notices (SCN) dated June 30, 2005 were issued to the noticees charging that they had violated the PFUTP Regulations and calling upon them to show cause why suitable directions should not be passed against them under section 11B of the SEBI Act. The major observations in the SCNs were as follows:

- (a) Preferential allotment of 10 crores shares was made by DASL to BBL on a preferential 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. Prior to this DASL had made a preferential allotment of
- (b) During the period of investigation i.e. August 2001 to January 2002, though there was no substantial price movement, there was a spurt in volumes. The fall in price and the spurt in volumes was due to continuous off loading of the unlisted shares 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. The allotment was

further not based on any prudent commercial sense and it was only a conduit to enhance the number of shares allotted to the innocent investors by off-loading these unlisted shares in the market.

(d) The management of DASL was also involved in off-loading these unlisted shares to innocent investors and actively assisted BBL in its colourable designs, for unfair gains.

(e) The unlisted shares were delivered in the market by BBL through various brokers and other entities. The details of the transactions in the DP Account of BBL was extracted in the SCN, as follows:

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

Details of retransfers into DP a/c of BBL are given 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

Details of movement of the said unlisted 6 crore shares from the various accounts are as hereunder:

1. (IN300888/ 13162987): Account of 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

2. (IN300888/ 14171657): Account of 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 market	5,16,541	
14.01.2002		Delivered in market	2,17,000	42,66,459
15.03.2002		BBL	42,66,459	Nil

3. (IN301485/ 10000677): Account of 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

4. (IN301485/ 10029747): Account of 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

5. (IN301983/ 10004669): Account of 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

- (f) 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 follows:

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>
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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>

- (g) BBL gave letter to the investigating authority stating that the shares were transferred to the aforesaid transferees, except CD Equisearch and Murali Nair for the purpose of arranging loans against their mortgage. When confronted with this statement, the transferees denied the same and gave a different version.
- (h) Mr. Manoj Ganeriwala to whom 50 lacs shares were transferred has stated in his sworn statement that he is not in the business of arranging finance etc.
- (i) Pinnacle Finstock to whom 50 lacs shares were transferred by BBL and who got another 50 lacs shares from the noticees had stated that these shares were arranged by Coverage and Consultants Ltd. towards their likely transactions and as advance pay-in.
- (j) Mr. Manoj Ganeriwala had made a statement that Mr. Murali Nair had requested for his DP ID and thereafter BBL had transferred 50 lacs shares each to his DP account as well as that of D.G. Goenka Equities Pvt. Ltd., a stock broker in which he was a director and that for the said transactions, there was no consideration.
- (k) It was alleged in the SCN that the letter produced by Mr. Ganeriwala is a concocted letter as it is dated November 11, 2001 whereas the transfer referred therein (from BBL to the noticees) took place only on November 13, 2001.

- (l) Mr. Ganeriwala's statement that the transfers were done on the instruction of Mr. Murali Nair, that the shares were transferred by mistake to Khandwala Int. Fin. Serv. Pvt. Ltd. and that the shares were returned to BBL was extracted. His denial of having any loan arrangement with BBL and his admission of his negligence was also mentioned.
- (m) It was observed that Mr. Ganeriwala wanted to assert the fact that Mr. Murali Nair who was a lower rung employee of DASL and BBL had his way over him and was directing his entire operations in the scrip of DASL.
- (n) It was alleged that Mr. Ganeriwala was an accomplice to the management of BBL and DASL in attempting to perpetuate and propagate the fraud of off loading unlisted shares in the market and that this is corroborated by the fact that DG Goenka Equities Pvt. Ltd., in which Mr. Ganeriwala was a director, also got into their accounts 50 lacs unlisted shares from BBL and had also dealt with entities related to DASL and BBL.
- (o) The noticees had exceeded 5% of issued capital of DASL and had violated the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 by not disclosing such acquisition to the company.
- (p) Details of dealings in unlisted DASL shares by DG Goenka Equities Pvt. Ltd. and the statements of their representatives were given.
- (q) The broad picture including nexus between DASL, BBL and various other related entities was given.
- (r) The notices were alleged to have violated regulations 3 and 4(a) to (d) of the PFUTP Regulations and were called upon to show cause why suitable directions including restraining them from accessing capital markets and prohibiting them from buying, selling or dealing in securities for a specific period should not be issued to them.

2.2 In response to the show cause notice, Ms. Madhu Ganeriwala submitted a written reply dated August 5, 2005 to SEBI mainly contending the following:

- (a) She was only the second joint holder in the joint demat account No.IN300888/ 13162987. Her name was added only for convenience and she did not have any interest in the said account during the life time of her

husband (Mr. Manoj Ganeriwala). She never transacted in any shares and did not pay or receive any consideration. She has enclosed her bank statement in support of this statement.

- (b) She did not have any knowledge of the transactions mentioned in the show cause notice since they were being taken care of and handled by her husband alone.
- (c) Under Companies Act only the first holder is recognised as the legal owner for purpose of payment of dividend etc. and she being the second holder does not have any title or interest in the shares.
- (d) She does not have any close relationship with DASL, BBL or Mr. Murali Nair, as alleged in the show cause notice (SCN, for short). This allegation is made without any evidence.
- (e) The allegation in the SCN that she assisted DASL and BBL in their designs to loot investors by offloading shares is denied, as no facts are stated in support thereof.
- (f) She being the second holder has no obligation to make disclosures under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
- (g) She did not violate any provision of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (the PFUTP Regulations 1995, for short) as she was the second holder and did not enter into any transactions.
- (h) Thus no proceedings under sections 11(4)(b) read with section 11B of the SEBI Act are called for against her.

2.3 Mr. Manoj Ganeriwala submitted a separate reply dated August 20, 2005 to the SCN contending mainly the following:

- (a) He does not have any close connection with DASL, BBL and Mr. Murali Nair as alleged in SCN. He does not know any employee of BBL. He knows Mr. Murali Nair, only as a client of DG Goenka Equities Pvt. Ltd. of which Mr. Ganeriwala was a director.

- (b) The documents relied on in the SCN and of which inspection was given to him do not support of the charge of violation of PFUTP Regulations, 1995.
- (c) With regard to the transactions in the joint demat account no. IN300888/13162987 held by him and his wife, he submits that 50,00,000 DASL shares were erroneously transferred thereto on 13.11.2001 by BBL. He was not aware of this and came to know of it only on receipt of a letter dated 11.11.2001 from BBL. The demat account ID was known to Mr. Murali Nair (employee of DASL), who was also a client of DG Goenka Equities Pvt. Ltd. (which was a stock broker of which Mr. Ganeriwala was a director). He was also not aware that the shares were unlisted.
- (d) These shares were transferred to Pinnacle Finstock Pvt. Ltd. (PFPL) on written instructions of BBL. No money was exchanged in regard to the said shares. In support, he has enclosed copies of his bank statements.
- (e) He did not have beneficial ownership of shares, as no consideration passed therefor. His obligation was merely that of finder of lost goods under sections 71 and 72 of the Contract Act. Further, SEBI failed to provide any evidence to the effect that these shares were offloaded in the market or to the effect that there was connivance between him and DASL and BBL to offload the shares.
- (f) Regarding credit of DASL shares to his account on 29.1.2002 by Pinnacle Finstock and Coverage and Consultants Ltd., he contends that he recalled the said shares from Pinnacle Finstock which he had transferred earlier in order to return them to BBL. He submits that he transferred these shares back to BBL on 5.3.2002 and 14.3.2002.
- (g) He further submits that Mr. Murali Nair had transferred 10,00,000 DASL shares to him on 12.12.2001 without his knowledge and the same was returned to him on 14.3.2002.
- (h) 8,75,000 shares were transferred to Arihant Capital Markets on the instructions of Mr. Murali Nair on 5.3.2002.
- (i) He did not violate any provision of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations,

1997 as he did not pay any consideration for the shares and they were transferred to him by mistake.

- (j) The observation relating to his involvement in the fraud to defraud investors has been based on conjectures, surmises and preconceived notions and not supported by facts.
- (k) The allegation of the charges being corroborated by the transfer of further 50 lakhs shares to DG Goenka Equities Pvt. Ltd. is incorrect since he had no knowledge of the transfer to the stock brokers account, as he was only a designated director therein.
- (l) His conduct does not measure up to the legal standard required for considering him as having aided and abetted DASL and BBL in offloading the unlisted shares.
- (m) He did not violate any provision of the the PFUTP Regulations 1995, as he did not enter into any normal trade and merely returned mistakenly credited shares. The SCN does not provide any data to show that the alleged transfers had any effect on share prices.
- (n) Thus no proceedings under sections 11(4)(b) read with section 11B of the SEBI Act are called for against him.

2.4 A personal hearing was also afforded to them on February 7, 2006 to explain their case, as requested by them. Mr. Kamal Agrawal, Chartered Accountant, appeared before me on behalf of the noticees and reiterated the above submissions.

- (a) To a specific question as to how similar kind of mistake could occur twice (one transfer of 50 lakhs shares from BBL and another of 10 lakhs shares from Mr. Murali Nair), particularly in respect of such large quantity of shares, the representative merely reiterated that they were mistakes and isolated incidents.
- (b) When questioned about the basis for the return of 47,11,320 shares by Pinnacle Finstock to Ganeriwala's account, he submitted that they were returned pursuant to a telephonic call made by Mr. Ganeriwala to Pinnacle Finstock so that they could in turn be returned to BBL.

- (c) To a pointed query as to why the entire lot of 47,11,320 shares returned by Pinnacle Finstock were not in turn returned to BBL (as the demat statement shows that only about 41 lakhs shares were ultimately returned to BBL), he was at a loss to explain the same.
- (d) He further submitted that he would submit additional written submissions by February 14, 2006.

2.5 As represented by her representative in the hearing, Ms. Madhu Ganeriawala filed written submissions dated February 14, 2006, wherein she reiterated her above submissions, essentially contending that she was the second joint holder.

2.6 Mr. Manoj Ganeriawala also filed written submissions dated February 14, 2006, stating as under:

- (a) There was no documentary or circumstantial evidence to prove that he had entered into any contract of buying, selling or dealing in securities, much less any such transaction involving violation of PFUTP Regulations.
- (b) It is not open to SEBI to rely on any other evidence excepting for the four documents which were shown to him. He cited the following judgments of the Hon'ble Supreme Court in support :
 - (i) New Prakash and Co. Vs New Suvama and Co. AIR 1957 S.C.232
 - (ii) D.K. Yadav v. J.M.A. Industries Ltd. (1993) 3 SCC 259
 - (iii) State of Orissa V. Miss Bina Pani Dei (AIR 1967 SC 1269)
 - (iv) Swadesi Cotton Mills V. Union Of India (AIR 1981 SC)
- (c) The transactions referred in the SCN were only inter-demat account transfers and could not be treated as an act of buying, selling or otherwise dealing in securities.
- (d) He also cited authorities to the effect that conjectures and surmises or mere suspicion could not take the place of evidence even in administrative proceedings.
- (e) In addition, he reserved the right to file additional reply when copies of additional documents and material relied on by the Investigating Officer in

addition to those shown to him during inspection were made available to him and cross-examination was afforded to him of the representatives of DASL, BBL, Pinnacle Finstock, Arihant Capital Markets etc.

3.0 Consideration of Issues

3.1 I have carefully considered the SCN, the written replies to the SCN of both parties, the oral submissions during personal hearing, written submissions made thereafter and other materials available on record. I proceed to examine the matter as below:

Mr. Manoj Ganeriwala

3.2 I note at the outset that SEBI had initiated adjudication proceedings against Mr. and Mrs. Ganeriwala for 15H(i) of the SEBI Act for not filing disclosures as required by regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 even though they jointly acquired more than 5% shares in DASL. By an order dated August 19, 2005, the Adjudicating Officer had imposed a monetary penalty of Rs. 1.5 lakh against the noticees jointly for the said non-compliance. The said order of the Adjudicating Officer has been upheld by the Securities Appellate Tribunal (SAT) vide its order dated August 21, 2006 passed in Appeal no. 153 of 2005.

Preferential allotment and subsequent transfer of DASL shares

3.3 Pursuant to an alleged MOU entered between DASL and BBL on September 15, 2001, they made preferential allotment of 10 crores 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 showing details of equity capital of DASL, as given below:

Till 11.07.1994 – 62.25 lakh shares at Rs 10 per share	=	Rs.6.225 crores
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 crores
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 crores</u>
		<u>Rs. 107.325 crores</u>

Whereas 62.25 lakh shares were 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.

3.4 The allotment made to BBL on October 29, 2001 amounted to about 14 times the pre-issue capital of DASL. It is seen that DASL did not have any passable commercial reason for making this huge allotment to BBL. In view of the irregularities in allotment, BSE had withheld listing permission to the shares so allotted to BBL. However, at the instance of DASL, CDSL proceeded to dematerialize the said shares and gave demat credit to the account of BBL. Once the credit was given, BBL and other entities (including the noticees) took advantage of the fact that the shares became fungible with and indistinguishable from other validly listed DASL shares and offloaded a part of it in the BSE, even though they were not supposed to do so in terms of the BSE Bye-laws.

3.5 Having regard to all relevant factors, SEBI passed orders on March 6, 2007 against DASL and BBL, the principal parties to the primary transaction of swap allotment made on October 29, 2001. Both of them were found guilty of violation of regulations 3 and 4 of the PFUTP Regulations, 1995. In the order passed against DASL, it was held that it had no passable commercial reason for making the huge allotment of 10 crore shares and the allotment was only a ruse to cover the offloading of unlisted shares to innocent investors. It was also found that DASL had fabricated some documents and cooked up imaginary reasons for giving false commercial colour to the allotment. It was also found that DASL issued the same 10 crore shares both physically by way of a jumbo certificate and in the demat form to BBL. It was further found that

DASL and BBL had close links through Mr. Murali Nair and Mr. Arvind Vaswani. In the order passed against BBL on the same date, it was observed that BBL had off loaded 6 crore shares to various entities including the noticees, out of the 10 crore unlisted DASL shares allotted to it. Its version that the relevant shares were transferred for the purpose of arranging finance were found to be not substantiated.

3.6 As seen from the tables mentioned in para 2.1(e), BBL had transferred 6 crores (out of the 10 crores allotted to it) equity shares of DASL to various entities, soon after the demat credit. Out of these, 50 lakh shares were transferred to the noticees and another 50 lakh shares were transferred to the account of one M/s. DG Goenka Equity Securities, which was a stock broker in which Mr. Ganeriwala was a director. Both these transfers were made on the same date i.e., November 13, 2001. Similarly substantial quantities were transferred by BBL to various other entities also subsequently, as seen from the tables in para 2.1(e).

3.7 For better appreciation, the chronology of events relating to the transactions in the noticees' demat account are juxtaposed with the broader events as under:

Date	Event
29.10.2001	Allotment of 10 crores DASL shares made to BBL on swap basis
10.11.2001	CDSL credits 10 crores 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 lakhs shares to the noticees and 50 lakhs 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 in the SCN, and reproduced at para 2.1(e).
22.11.2001	The noticees transfer the entire 50 lakhs shares available with

	them to Pinnacle Finstock Pvt. Ltd., a sub-broker.
12.12.2001	The noticees receive 10 lakhs shares from Murali Nair.
	Various parties including Coverage and Consultants Ltd., Pinnacle Finstock Pvt. Ltd. and DG Goenka Equities P. Ltd. offload substantial quantities of shares in the market on various dates.
14.01.2002	BSE suspends trading in the DASL shares
29.01.2002	The noticees receive 2,78,180 shares from Coverage & Consultants Ltd. and 47,11,320 shares from Pinnacle Finstock Pvt. Ltd. (Pinnacle Finstock)
05.03.2002	The noticees transfer 8,75,000 shares to Arihant Capital Markets Ltd.
14.03.2002	The noticees transfer 41,14,500 shares back to BBL and 10,00,000 shares back to Murali Nair. On the same date, Murali Nair transfers the 10,00,000 shares back to BBL.
	Various other parties also retransfer the unsold unlisted shares back to BBL, generally via the same route through which such shares had initially been transferred to them.

3.8 As would be evident from the table, within three days of credit in BBL's demat account of 10 crores shares, 50 lakhs shares were transferred to the noticees' joint demat account. Within a short time thereafter, the noticees transferred them to Pinnacle Finstock (it is an entity to which BBL had separately transferred 50 lakhs shares on 19.11.2001. It was also the sub-broker to Coverage & Consultants Ltd., which was a company that shared same address with BBL and which was the single major instrumentality in the offloading). It is seen that similarly huge quantities were transferred by BBL to a few other entities around the same time. It is seen that 50 lakhs shares each were transferred by BBL to DG Goenka Equities Pvt. Ltd. (a broker firm in which Mr. Ganeriwala was a director) and Mr. Murali Nair on the same date, i.e., 13.11.2001. The web of transfers and retransfers carries the

unmistakable indication that Mr. & Mrs. Ganeriwala, DG Goenka Equities Pvt. Ltd., Pinnacle Finstock, Mr. Murali Nair etc. were conduits through which the unlisted shares were eventually to be offloaded in the market.

3.9 Another significant trend which can be discerned from the transactions outlined at para 2.1(e) is that various parties to whom transfers were made offloaded part of the shares in the market. While this was so, the BSE had unexpectedly (at least from point of view of the parties) suspended trading in the DASL scrip. Having thus been stymied in the act of further offloading, the various entities re-transferred the remaining shares back to their transferors and eventually to BBL, as seen from the fourth table at para 2.1(e). The transactions in the demat account of the noticees are no exception to this trend. They are of a piece with the over-all modus-operandi.

3.10 Mr. Ganeriwala submitted that the credit of 50 lakhs shares in the said joint demat account was a mistaken credit. He contended that it was the result of a mistake and was unknown to him. He says that it was rectified by transferring the shares to Pinnacle Finstock on the written instructions of BBL. Copy of the letter dated 11.11.2001 purportedly written by BBL to him has been enclosed by him. I have perused the letter. The first thing which strikes the mind is as to how the letter which was purportedly written by BBL on 11.11.2001 could have anticipated the transfer which was to be made and which was in fact made two days later i.e., on 13.11.2001. On a reading of the letter dated 11.11.2001, it would be evident that the letter clairvoyantly foresees a mistake in the transfer of 50 lakhs shares to the noticees, whereas the alleged mistake took place only on 13.11.2001. The irresistible conclusion in such circumstances is that the letter was fabricated as an afterthought. When a specific question was put to the noticees' representatives at the personal hearing as to how BBL could anticipate the mistaken transfer which would be made two days hence and write a letter to correct a future mistake, he was at a loss to explain it.

3.11 Thus, the contention of the noticees that the transfer of 50 lakhs shares from BBL was an unintended mistake and was rectified at the earliest, flies in the face of documentary evidence. Further, the case history bristles with several incongruities for which there could be no valid explanation, including the following:

- (a) After realisation that the transfer of 50 lacs shares to Pinnacle Finstock (on 22.11.2001) was by mistake, the noticees waited for more than two months before taking them back from Pinnacle (on 29.1.2002).
- (b) Though the earlier transfer to Pinnacle Finstock was on written instructions of BBL, the noticees did not take written instructions again from BBL before collecting the shares back from Pinnacle Finstock.
- (c) The noticees accepted only 47,11,320 shares from Pinnacle Finstock though they were, as per their reasoning, required to take back 50 lakhs shares, which they had initially transferred to Pinnacle Finstock, for the purpose of returning them to BBL and rectifying the mistake. There is no explanation why the noticees accepted a portion of these shares from Coverage and Consultants Ltd. and how they were convinced about its relationship with Pinnacle Finstock.
- (d) Only 41,14,500 shares were returned to BBL after a delay of about one and a half months (on 14.3.2002) and the balance was transferred to another entity (Arihant Capital Markets) on 5.3.2002. There is no explanation for the transfer of 8,75,000 shares to Arihant.

Thus there are obvious gaps which do not accord with normal human conduct, thereby exposing the gameplan in all its starkness despite attempts to impart verisimilitude.

3.12 There is no explanation again as to why a further huge quantity of 10 lakhs shares should be transferred by Mr. Murali Nair to him on 12.12.2001. It would take extreme naïveté to believe the noticees' version that this was once again a mistake. These shares were retained by the noticees for three long months before returning them back to Mr. Murali Nair.

3.13 In the passing, I also find the submission of the noticees to be inconsistent with that of the other principal parties. Pinnacle Finstock has contended that the transfer to 50 lakh shares from the noticees was on account of likely transactions of Coverage & Consultants Ltd. BBL has contended that the transfer of 50 lakh shares each to the noticees and DG Goenka Equities P. Ltd. was for the purpose of arranging finance. Such inconsistencies and contradictions are the direct outcome of an exercise in afterthought by the interested parties in their face-saving efforts, while their explanations peter out to be self-serving statements.

3.14 It is also not to be lost sight of that Mr. Ganeriwala was a designated director of DG Goenka Equities Pvt. Ltd., which was a registered stock broker (and thus not a person unacquainted with the securities market) and that he would in the normal course be and ought to have been aware of the significance of such large quantities of shares being credited to his account. It is to be noted that the amount of 50 lakhs shares constitutes about 80.3% of the total listed capital of DASL. Taken together with the number of shares credited to DG Goenka Equities P. Ltd., the number far exceeds the total validly listed capital of DASL. Such a windfall credit in any account should have normally excited the attention of the account holder, more so in the case of a registered market intermediary with sensitivities attuned to the integrity of the market. In such a context, the plea of innocence attributing the transfers to repetitive mistakes is highly specious and contrived, not worthy of acceptance. In any event, as circumstances would bear out, they were not mistakes and were meant to be part of a course of action as planned.

3.15 In the scheme of things as above, the inescapable conclusion is that the noticees acted as conduits in the exercise of offloading of unlisted DASL shares to unsuspecting investors. The exercise could not be carried out in its entirety on account of suspension of trading in the DASL scrip by BSE, while it was underway.

3.16 Coming to the contention of the noticee that he was not a beneficial owner, but only a finder of lost goods, the same does not pass muster having regard to the attendant circumstances of the case.

3.17 It is hard to believe that Mr. Ganeriwala had a purely professional relationship with Mr. Murali Nair. There are enough tell-tale strands in the sequence of events to demonstrate that the relationship was more than professional. There is no explanation why Mr. Ganeriwala shared his personal demat account ID with an employee (Mr. Murali Nair) of the client of the brokerage firm (DG Goenka Equities) in which he was the director. There is further no explanation as to how this ID reached BBL. The further transfer of 10 lakhs shares made by Mr. Murali Nair to the personal demat account of the noticees also cannot be considered to be in the course of a clinical professional relationship. It is noteworthy in this context that Pinnacle Finstock and Coverage & Consultants Ltd. were two main parties who successfully offloaded substantial quantities of unlisted shares in the market, which evidently included a portion of shares transferred by the noticees. These facts fortify the conclusion supra that the noticees were a conduit in the offloading. A network of entities had been employed in the offloading so as to confound the audit trail.

3.18 It ought to be noted in this context that the 50 lakh shares transferred by BBL to DG Goenka Equities P. Ltd. were purportedly towards margin requirements and future market obligations of Mr. Murali Nair and a company by name Vargin Finance P. Ltd. (VFPL), which shared two common directors with DASL. It is intriguing as to why BBL happened to transfer 50 lakh shares to DG Goenka to meet the margin requirements of Mr. Murali Nair and VFPL. The whole explanation is at once weird and unconvincing.

3.19 It is therefore clear that various parties who were involved in the offloading as mentioned above had material relationships through transactions with the noticees and DG Goenka Equities P. Ltd. Any attempt on their part to explain

away the same does not hold water in view of the substantial nature of the transactions and also in view of the fact that in all such transactions unlisted shares of DASL were involved, for offloading in the market to the detriment of lay investors.

3.20 As seen from the reconciliation given in para 2.1(f), the transactions of the noticees have resulted in 8,75,000 unlisted shares of DASL being delivered in the market or otherwise becoming unaccounted for. As noted above, the noticees have no explanation regarding these shares. Having regard to the total validly listed shares of DASL, this is not a small number. It constitutes 14% of the validly listed capital of DASL. As seen from the same reconciliation statement, DG Goenka Equities P. Ltd. is responsible for another 8,33,541 unlisted DASL shares being delivered in the market. These figures have not been disputed by the noticees.

3.21 At this point it is necessary to refer to the order passed by the Securities Appellate Tribunal [already referred to in para 3.2] whereby it dismissed the appeal filed by the noticees against an order of the SEBI Adjudicating Officer imposing monetary penalty of Rs. 1.5 lakhs on the noticees for non-compliance with regulation 7 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Though that case involved violation of a different provision, the facts out of which the violation arose was the same as those involved in the present case and the explanation offered by the noticees in that case was similar to those currently advanced by them. The following observations of SAT are noteworthy:

“As is clear from the aforesaid transactions which are admitted by the appellant, they had 59,89,500 shares of DASL in their account which amounts to 5.58% of the total paid up equity capital of DASL. This percentage figure has at some of the places in the impugned order been referred to as 5.49% but the learned counsel for the appellant confirms that the correct figure is 5.58%. Admittedly, the appellants had not complied with Regulation 7(1) of the Regulations in as much as they had not

disclosed their shareholding in DASL to that company... The appellants filed their detailed reply which makes a very interesting reading. It was stated that the transfer of 50 lac shares by BBL in their account was without their knowledge and consent and that they have neither purchased nor acquired the shares. It was further pleaded that these could have been erroneously transferred to their account by unknown persons. As regards the transfer of 10 lac shares by Murli Nair in the account of the appellants, it was stated that the said transfer was fraudulent and without any intimation, knowledge or authorization from the appellant. The appellants also took the stand that on receipt of instructions from BBL in November, 2001 50 lac shares were transferred to the account of Pinnacle Finstock Ltd. through Khandwala. As to why the appellants received on 29.01.2002 shares by way of transfer from Coverage Consultant Ltd. and Pinnacle Finstock Ltd. they have not furnished any explanation in their reply. As regards the transfer made by the appellant to Arihant Capital Markets it is stated that the said transfer was made under instructions of BBL. Ten lac shares which the appellants received from Murli Nair fraudulently were transferred back on 14.03.2002 as per the reply filed by the appellant. The reply was considered by the adjudicating officer who did not believe the story as put forth by the appellants and we also find it very difficult to accept what has been stated on behalf of the appellants. A fanciful story has been made out which makes no sense. The vital questions which give rise to suspicion remain unanswered. The appellants pleaded before the Board as well that they had not acquired the shares and the same had been inadvertently/fraudulently transferred to their accounts. The adjudicating officer did not accept this stand taken by the appellants and concluded that they had acquired the shares and since they failed to comply with Regulation 7(1) of the Regulations, he imposed a penalty of Rs.1.5 lacs by the impugned order. Hence this appeal.

We have heard the learned counsel for the parties. As already noticed earlier, the story as put forth by the appellants cannot be believed. Why should a company like BBL transfer as many as 50 lac shares to the account of the appellants without their knowledge and consent. The demat account has numbers and obviously that account number must have reached BBL before the transfer took place. Again, the appellants transferred 50 lac shares to Pinnacle Finstock on the instructions of BBL. If they had received the shares by mistake from BBL there was no reason for the appellants to transfer those shares in the name of Pinnacle Finstock on the asking of

BBL. There is obviously a big game plan and the appellants have been successful in not disclosing the same to the adjudicating officer. Shares were transferred in the account of the appellant without their knowledge not only from BBL but also from one Murli Nair. The shares are then transferred back in two lots by Coverage Consultant and Pinnacle Finstock on 29.01.2002. The learned counsel for the appellant informs us that these are the very shares which appellant no.1 had transferred to Pinnacle Finstock on the instructions of BBL. Even this part of the story does not appear to be correct. Appellant no.1 had transferred 50 lac shares to Pinnacle Fin Stock but Pinnacle Finstock has transferred back only 4,71,132 shares to appellant no.1 and another 2,78,180 shares are coming from Coverage Consultant Ltd. There is still a shortfall of some shares. No one knows where they are. The story set up by the appellants makes no sense. We are, therefore, in agreement with the findings recorded by the adjudicating officer. It is common case of the parties that the shares had been transferred in the demat account of the appellants and their case is that they have not acquired these shares. The onus to prove this fact lies on the appellants. They have miserably failed to discharge the onus and the story with which they have come up is just not believable. We have therefore no hesitation in holding that the appellants acquired 5.58% shares of DASL and did not disclose their acquisition to that company. This is violation of the Regulation 7(1) of the Regulations and the adjudicating officer was right in imposing a penalty of Rs.1.5 lacs. No fault can, thus, be found with the impugned order."

3.22 It is therefore clear that the purported explanation that the shares were transferred by mistake or fraudulently to the demat account of noticees is fanciful and not acceptable.

3.23 As regards whether the above conduct violates regulations 3 and/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."

3.24 Regulation 3 forbids buying, selling or otherwise dealing in securities in a fraudulent manner. For this purpose, regulation 2(1)(c) contains an elaborate definition of 'fraud' which takes within its fold the act committed by a party, any act committed with his connivance or by his agent. As seen from the above facts, the noticees were dealing in unlisted DASL shares in pursuance of a larger gameplan which was to off load the unlisted shares in the BSE and to defraud the other investors who might become counterparties by leading them to believe that the shares were validly listed shares of DASL. The fact that such huge quantities of unlisted shares were routed through their demat accounts goes to show that they were necessary parties in the offloading, which was a fraudulent act to the detriment of unsuspecting investors. The offloading might have been complete but for the suspension of trading in the DASL scrip ordered by BSE. Their conduct specifically falls within sub-clauses (1) and (2) of regulation 2(1)(c), as it would have in the normal course induced the other players in the market to believe that the shares being off loaded were validly listed shares. In view of the above, I have no hesitation in holding that the noticees have violated regulation 3.

3.25 As seen from the above, the unlisted shares offloaded through the noticees amounted in number to 8,75,000 and those offloaded by DG Goenka Equities P. Ltd. amounted to 8,33,541. The offloading took place between 22.11.2001 and 14.2.2002. As noticed in the SCN (which is record based and not controverted by the noticees) during the period there was decline of price in the scrip of DASL from Rs. 4.25 on 12.10.2001 to Rs. 1.65 on 11.2.2002. There was also a spurt in the volumes from 1800 traded shares on 12.10.2001 to 18.96 lakhs traded shares on 5.12.2001. As mentioned in the SCN, both the fall in prices as well as the spurt in volumes was on account of offloading of unlisted DASL shares in the market by various entities. As seen from the above, the shares thus offloaded included those routed through the noticees as well as through DG Goenka Equities P. Ltd. Such offloading also created a false and misleading appearance of trading in the market as unsuspecting investors had mistaken the further trades in the unlisted shares

to be those in validly listed shares and purchased them. I therefore hold that the noticees have violated regulation 4(b).

3.26 Mr. Ganeriawala has in his written submissions laid heavy emphasis on the alleged fact that he did not enter into any contract for buying, selling or dealing in the DASL shares and therefore that he could not be held liable for any violation of the PFUTP Regulations. I do not find merit in this contention. It is not for SEBI to prove the existence of a formal contract, for such existence is not an ingredient of the violation contemplated in either regulation 3 or regulation 4. The definition of 'dealing in securities' given in regulation 2(b), is broad enough to comprehend actual "buying, selling or otherwise dealing" that had taken place in any security in addition to agreements for such buying, selling or dealing.

3.27 I observe that the proof of manipulation almost always depends on inferences drawn from a mass of factual details. Findings must be gathered from patterns of transactions, the nature of the transactions etc. Several circumstances of a determinative character coupled with the inference arising from the conduct of the parties in a major market manipulation could reasonably lead to conclusion that the parties are involved in fraudulent activities. The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. As pointed out by Best in "Law of Evidence", the presumption of innocence is no doubt *presumptio juris*; but everyday practice shows that it may be successfully encountered by the presumption of guilt arising from circumstances, though it may be a presumption of fact. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case.

3.28 Presumption plays a critical role in coming to a finding as to the involvement or otherwise of a party in any market misconduct. Therefore, the

hackneyed plea based on intentions in the market place can not pass muster in all circumstances, more so when such intentions are in the special / peculiar knowledge of the parties to the transactions. Also any suggestion attributing innocence to the parties involved in such transactions would give rise to an untenable situation where certain other third parties alone would be responsible for the manipulation and none else.

3.29 In a quasi judicial proceeding like this turning on preponderance of probability, the standard of proof is prudent man's estimate as to the probabilities of the case. In this view also, any plea to delink the noticees from the collective nexus would be a travesty of facts.

3.30 In this context, it is to be noted as held by the Hon'ble Supreme Court, that proving every link of process in case of clandestine activities such as smuggling of goods may be impossible¹ and that as per section 106 of the Evidence Act, such activities which are especially within the knowledge of the alleged offenders are not required to be proved by the enforcement agency if otherwise circumstantial evidence makes the larger picture clear. This reasoning equally applies to securities laws violations where secrecy is the key to manipulative activities. In any case, the findings given in this order are based on record based evidence of the transactions of the noticees and DG Goenka Equities P. Ltd. which were abnormal in size and character and accompanied with explanations which were taxing of credence and hence unacceptable, to say the least.

3.31 As regards the contention of the noticees that the principles of natural justice were not adhered to as only four documents were made available to him for inspection, I note that the proposition laid down in the four judgments of the Hon'ble Supreme Court relied upon by him [as listed in para 2.6(b)] – that an authority cannot rely upon documents that are not disclosed to a noticee - is indisputable. However, the said proposition does not come in the

¹ *CC v. Bhoormull* – (1974) 2 SCC 544

way of the present order, as the only documents and facts referred to and relied upon in the present order are those contained in / annexed to the SCN and those which were allowed to be inspected by the noticees. The noticees have further contended that they ought to have been allowed to cross-examine the representative of Pinnacle Finstock. I note in this context that the only reference to the statement of that representative in this order is in the context of exposing the inconsistent versions of the noticees and that of Pinnacle Finstock. This is a passing reference and does not materially alter the case against the noticees, which is that they had acted as a conduit in offloading unlisted DASL shares to unsuspecting investors.

Ms. Madhu Ganeriawala

3.32 As far as the merits of the matter are concerned, it would at first sight seem that Ms. Ganeriawala is equally liable as her husband, for the demat account through which the above dealings took place were jointly held by them. The only question which remains for consideration is whether her legal liability is diminished or obliterated in any manner in view of the fact that she was only a second joint holder of the demat account and that she allegedly was unaware of the transactions.

3.33 As noted above, the dealings observed in the demat account of the noticees is highly exceptionable and constitute violation of the PFUTP Regulations. All joint holders who operated this account or allowed it to be operated in their name will be responsible for the legal consequences of such dealings.

3.34 It is well settled that a second joint shareholder cannot shield himself or herself behind the first holder. Even assuming without accepting that the second joint holder was only a name-lender, such name-lending itself is objectionable, more so when it is found that the shares have been dealt with in a manipulative manner. If such name-lending is allowed to go on unchecked, this will allow the principal manipulators to position themselves as

second or subsequent joint holders and hide their identities behind a nominal first holder.

3.35 For all important matters of Company Law, the second and every subsequent joint holder of shares has the same rights and liabilities as the first holder. For instance, all joint holders are jointly and severally liable for payment of calls made on their shares by the company.² Similarly, shares can be transferred only if the transfer deed is signed by all joint holders. On this count also therefore, the defence of Ms. Ganeriwala is not tenable.

3.36 I therefore hold that Ms. Ganeriwala also is equally culpable as her husband and has violated regulations 3 and 4(b) of the PFUTP Regulations, 1995.

4.0 Directions

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 attempt to offload and pass off unlisted shares as validly listed shares in the market. This however, could not be carried to fruition due to an external and fortuitous circumstance, i.e., the suspension of trading in the DASL shares by BSE. As further seen above, the conduct of Ms. Ganeriwala is no less blameworthy than that of her husband.

² Section 43 of the Contract Act, 1872 and Table A, Article 15 of the Companies Act, 1956.

4.2 As noted above, the noticees have violated regulations 3 and 4(b) 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 the noticees namely Mr. Manoj Ganeriwala and Mrs. Madhu Ganeriwala be restrained from accessing the securities market and also prohibited from buying, selling or dealing in securities either directly or indirectly for a period of three years from the date of this order.

Mumbai

November _7th_, 2007

G. ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA