

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: G. ANANTHARAMAN, WHOLE TIME MEMBER

**ORDER UNDER SECTIONS 11 AND 11B OF THE SEBI ACT, 1992
IN THE MATTER OF DEALINGS OF M/S. SHRI PARSHWA FINANCE IN THE
SCRIP OF DESIGN AUTO SYSTEMS LTD.**

1.0 Background

1.1 SEBI conducted investigations into dealings in the shares Design Auto Systems Ltd. (DASL), for the period between November 2001 and January 2002 pursuant to a preferential allotment made by the said company to another company called Bonanza Biotech Ltd. (BBL) in the swap ratio of 1:1. 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 case 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 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. There was no exchange of cash.
- (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. The BSE kept the listing application pending, as it apprehended that DASL would have committed certain violations of law in the process. No listing application was made to ASE. However, even MPSE had not granted the trading permission.
- (c) Eventually, the listing application of DASL was rejected by BSE. On the basis of listing permission given by MPSE, the Central Depositories

Services Ltd. (CDSL), a registered depository, dematerialized these shares and credited them to the beneficial owner account of BBL.

- (d) BBL offloaded substantial portion of these unlisted shares on the trading platform of BSE through a network of entities, including one Coverage & Consultants Ltd. (C&C). Though this was 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 validly listed shares of DASL. As a result, a number of innocent investors who purchased those shares were defrauded and saddled with unlisted shares 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 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 innocent third party interests which were already created 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 and apparent malpractices committed by DASL, BBL and other entities.

1.2 During the course of the aforesaid investigations, summons were 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 the court directed SEBI to ensure expeditious completion of investigation. 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. C&C was also found to be instrumental in offloading 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 sub-broker, M/s Pinnacle Finstock Pvt. Ltd. ("Pinnacle") and one M/s Shree Parshwa Finance, who as an unregistered sub-broker of P. Suryankanth Share and Stock Brokers Pvt. Ltd. allegedly 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 SEBI was granted time 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. C&C was also found guilty of violation of regulations 3 and 4 of the PFUTP Regulations, 1995 in an order passed on October 22, 2007. The present proceedings against M/s Shree Parshwa Finance ("the noticee"), which acted as an unregistered sub-broker to one P. Suryakant Share and Stock Brokers Pvt. Ltd. and engaged in trades on behalf of C&C during the relevant period, have also been delayed for the same reasons that occasioned delay in proceedings against DASL, BBL and C&C, as examination of the case against the noticee had to necessarily be done together with the cases against those entities.

2.0 Show cause notice, hearing and reply

2.1 From the findings of the Investigating Authority, it appeared that the noticee was instrumental in offloading the unlisted DASL shares on the BSE trading platform. Accordingly, show cause notice (SCN) dated June 30, 2005 was issued to the noticee, among others, charging that he had violated the PFUTP Regulations and calling upon him to show cause why suitable directions should not be passed against them under section 11B of the SEBI Act. The major observations in the SCN 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.
- (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 to loot 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 nefarious designs.
- (e) DASL also created fraudulent documents to cover up their lapses.
- (f) Of the said 10 crore unlisted shares of DASL dematerialized with CDSL, 6 crore unlisted shares were transferred from the account of BBL to different entities as stated below:

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 (B1 +B2)	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

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

- (g) 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>

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>

- (h) 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.
- (i) The broad picture including nexus between DASL, BBL and various other related entities was given.
- (j) The noticee was an unregistered sub-broker to P. Suryakant Share and Stock Brokers Pvt. Ltd. at the relevant point of time. The main clients of the noticee were Coverage & Consultants Ltd. ("C&C") and M/s Kishore Corporation.
- (k) The noticee's statement that he did not enter into any client agreement form with C&C was referred to. The discrepancy in his statement

regarding whether the trades were done on behalf of C&C or Kishore Corporation was also pointed out.

- (l) The details of trades done by the noticee for C&C was extracted as follows:

Sett. No.	Sales	Purchases
38	8,76,500	1,500

- (m) Preliminary formalities like member client agreement and KYC were not completed by the noticee in respect of its clients and it failed to exercise due diligence over its clients.
- (n) The noticee was an accomplice to the management of BBL in attempting to perpetuate and propagate the fraud of offloading unlisted shares in the market.
- (o) The noticee was alleged to have violated regulations 3 and 4(a) to (d) 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, M/s Shri Parshwa Finance submitted a written reply dated October 10, 2005 to SEBI mainly contending the following:

- (a) The proceedings initiated against him were not maintainable and ought to be dropped.
- (b) The allegations were based on uneventful transactions, presumptions, assumptions, surmises and conjectures and could not be sustained.
- (c) The documents annexed with the SCN appeared to be with respect to records and procedures carried out by DASL, for which he did not have any personal knowledge or capability to ascertain its legality and validity as sub-broker.
- (d) He could not be treated as an unregistered sub-broker to P. Suryakant Share & Stock Brokers Pvt. Ltd. as he had made an application to SEBI

way back in May 2001. As SEBI had granted him registration subsequently, it had ratified all his acts since May 2001.

- (e) He denied that C&C was the main client as far as his business as a sub-broker in general was concerned. He however, admitted that C&C was his only client as far as the DASL scrip was concerned.
- (f) As far as the table in para 65 of the SCN [para 2.1(m) above] was concerned, he submitted that he sold 2,26,500 shares on December 12, 2001 and bought 1,500 shares on December 14, 2001 and in all he had thereby sold (net) 2,25,000 shares of DASL for and on behalf of C&C. Total shares offloaded by C&C during the period were 33.33 lacs. He submitted that the figure of 8,76,500 shares sold as given in the SCN was therefore factually untrue. Thus, the 2.26 lacs shares found to have been off loaded through his sub-brokership constituted very negligible portion of the total number of such shares off loaded in the market, by C&C and as well as of the total unlisted shares offloaded by all entities.
- (g) Regarding para 66 of the SCN, relating to transactions of Kishore Corporation for which delivery was taken from C&C, he submitted that material facts had been twisted in the said paragraph. He submitted that he had separately transacted on behalf of C&C as above, and on behalf of M/s Kishore Corporation. The two were different transactions. He had received 6,50,000 DASL shares in his demat account from M/s Kishore Corporation, for transactions dated December 10 and December 11, 2001. Payment for the said transactions had been made to M/s Kishore Corporation. The allegations in para 66 are therefore only a figment of imagination.
- (h) With regard to allegations in para 67 of the SCN, concerning failure to exercise client due diligence, he submitted that he had immediately discontinued dealings with C&C during period under investigation and any businessman of ordinary prudence could not have been expected to discontinue a new client earlier.

- (i) He denied the allegations in para 68 of the SCN wherein it was stated that one Rajesh Jhaveri had requested to return 2,25,000 shares that he had received from C&C.
- (j) He denied that he deliberately sold unlisted shares for C&C. He sold only 2,25,000 shares which constitutes only 0.0002% of the total quantity of shares alleged to have been fraudulently issued. The remaining shares were off loaded by persons other than him.
- (k) All the DASL shares held by C&C were not unlisted shares. In para 48 of the SCN itself it was observed that over and above 1 crore shares transferred to C&C by BBL, Pinnacle Finstock had transferred 11 lacs shares to C&C out of which 4.06 lacs shares were unlisted. Thus, part of the shares held by C&C were validly listed shares. Further, both listed as well as unlisted shares held by C&C carried the same ISIN, and became clubbed with each other. It was not correct to presume that the shares delivered through came from the unlisted portion.
- (l) There is no duty cast on the broker or sub-broker to see that the shares for which they received instruction from their clients to deal were listed or not and whether they were properly issued or not.
- (m) He admitted that preliminary formalities like member client agreement and KYC were not completed, but that such minor technical lapses need not be viewed seriously considering his conduct and role and the over all misdeeds of others.
- (n) It is not correct to say that he had failed to exercise due diligence over his clients. He submitted that the investigating officer should have appreciated his immediate discontinuing and severance of relationship with C&C. The only occasion when he dealt with C&C could not be construed as a substantial failure to exercise due diligence. In any case it could not lead to the conclusion that he had violated regulations 3 & 4 of the PFUTP Regulations.
- (o) He emphatically denied that he was an accomplice to the management of BBL in attempting to perpetuate and propagate fraud of off loading

unlisted shares in the market. The allegation was not logically established, but was based on surmises and conjectures. The material facts such as absence of specific differentiation between listed and unlisted shares carrying the same ISIN held by C&C, the only occasion of dealing in the said scrip, the only instance of dealing on behalf of C&C, the quantum of trading through him as compared to the total volume of such traded shares during the period etc. were ignored by the investigating officer.

- (p) Issue of shares was a contract between the company and the allottees and the consequent transfer and dematerialization was a joint act of company, shareholder, RTI and the depository under the aforesaid acts and the sub-broker was in no way party to the same.
- (q) Attempt has been made in SCN to correlate him with alleged misdeeds of all other clients without establishing any nexus and without even remotely suggesting his role therein.
- (r) He had transacted on behalf of clients as per their instructions, and he was not in a position to know or inquire or investigate into the motive of his clients in as much as there was nothing to show that they were in any manner trying to carry out any activity which could be said to be illegal, unlawful or wrongful.
- (s) SCN was bad in law on ground of mis-joinder of cause of action, and inclusion of subject matter which was not part of summons.
- (t) He emphatically denied that he violated regulations 3 and 4(a) to (d) of the PFUTP Regulations.

2.3 A hearing was afforded to the noticee on February 7, 2006 to explain his case, as requested by him. Shri Piyush Jhaveri, proprietor of the noticee, appeared before me and reiterated the above submissions.

3.0 Consideration of Issues

3.1 I have carefully considered the SCN, the written reply to the SCN of the noticee, the oral submissions made at the personal hearing and other materials available on record.

Preferential allotment and subsequent transfer of DASL shares

3.2 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 were listed at MPSE. No listing application in that regard was made with ASE.

3.3 The allotment made to BBL on October 29, 2001 amounted to about 14 times the pre-issue capital of DASL. It was 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 C&C) 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.

3.4 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 C&C, out of the 10 crore unlisted DASL shares allotted to it. BBL's version that the relevant shares were transferred for the purpose of arranging finance was found to be not substantiated. The nexus between C&C and BBL in the form of a common director and common address was also pointed out.

3.5 As seen from the tables mentioned in para 2.1(f), BBL had transferred 6 crores equity shares of DASL (out of the 10 crores shares allotted to it) to various entities, soon after the demat credit. Out of the 6 crores shares so transferred, 1 crore shares were transferred to C&C alone. Subsequent transactions in C&C's demat account have already been extracted at para

2.1(f). After considering all relevant facts, SEBI passed an order on October 22, 2007 against C&C holding that it had offloaded a significant number of unlisted DASL shares to unsuspecting investors and that it was part of the fraud outfit designed to cheat innocent investors. It was further found that C&C had engaged in synchronized trades and self-trades in the DASL scrip. It was therefore concluded that C&C violated regulations 3 and 4 of the PFUTP Regulations, 1995. C&C and its directors were restrained from accessing the securities market and also prohibited from buying, selling or dealing in securities either directly or indirectly for a period of seven years.

Role of the noticee

3.6 It was alleged in the SCN that the noticee had transacted on behalf of C&C, as an unregistered sub-broker of P. Suryakant Shares and Stock Brokers P. Ltd. during the relevant period in settlement no. 38 (BSE). It was alleged that he made a net sale of 8,75,000 DASL shares on behalf of C&C. It is noteworthy in this context that C&C was the single largest instrumentality in offloading unlisted DASL shares in the market.

3.7 The noticee had contended that this allegation in the SCN was factually untrue and that he had only transacted for C&C on one occasion and only once in the DASL scrip and that there was no other relationship between him and C&C. He contended that he had made only a net sale of 2,25,000 DASL shares during the relevant period on the only occasion. He contended that separately he had sold 6,50,000 DASL shares on behalf of another client by name Kishore Corporation. He therefore submitted that the number of shares sold by him on behalf of C&C amounted to an insignificant quantity when compared with the total unlisted DASL shares offloaded by all entities involved in the case.

3.8 In this connection, I perused a letter dated August 25, 2002 written by the noticee to the Investigating Authority. In this letter, he had provided

information on the clients on behalf of whom he had dealt in the DASL scrip. There is no mention of the said Kishore Corporation in the said letter, while C&C is mentioned as a client. He had enclosed the copies of the bills issued by him to his clients in the DASL scrip with the said letter. There is no reference in the said bills to Kishore Corporation. On the other hand, the bills clearly showed that the noticee sold 8,76,500 DASL shares and purchased 1,500 DASL shares (net sale of 8,75,000 DASL shares) on behalf of C&C. The details as culled out from the bills are as follows:

Date of transaction	Buy / sell	Quantity
10/12/2001	Sell	1,500
10/12/2001	Sell	1,48,500
11/12/2001	Sell	4,49,000
11/12/2001	Sell	51,000
12/12/2001	Sell	45,000
12/12/2001	Sell	62,600
12/12/2001	Sell	1,18,900
14/12/2001	Buy	1,500

Sell total: 8,76,500 shares

Buy total: 1,500 shares

I also note that he had enclosed a copy/extract of ledger account of C&C in his books alongwith the aforesaid letter. From the extract of the said ledger account it is seen that the noticee had credited a sum of Rs. 48,77,550/- to C&C's account arising from sale of the DASL shares in question.

3.9 Thus, the allegation made in the SCN regarding the quantity of shares sold on behalf of C&C stands established by the contemporaneous documents maintained by the noticee in the ordinary course of his business, which were produced by himself before the Investigating Authority. Also, the materials available on record nail to the counter the noticee's claim that he dealt only in 2.25 lakh shares of DASL for C&C. Further, the bills accompanying the letter dated August 25, 2002 clearly indicate that the noticee dealt for C&C not only

in the DASL shares, as claimed by him, but also in the shares of another company by name Sheetal Securities.

3.10 The question which then arises is as to why the noticee had to deny this fact, unless he had something to hide. I find that the net sales made by the noticee on behalf of C&C are by no means insignificant, as sought to be made out by the noticee. As may be seen from the table at paras 3.2 and 3.8 above, the net quantity sold by the noticee on behalf of C&C during the relevant period amounts to more than 14% of the total validly listed share capital of DASL (which was only 62,25,000 shares). Even reckoned as a percentage of the total unlisted shares which were eventually offloaded (98,21,074 shares), the net sales made by the noticee amounted to almost 9% of the total. If seen as a percentage of the shares eventually offloaded by C&C (33,33,669 shares), it amounts to more than 26% of the total. Even assuming as contended by the noticee that C&C had in its possession 4.01 lakhs validly listed shares of DASL and it is quite possible that it was those validly listed shares and not the unlisted shares were sold by him on behalf of C&C, the quantity sold by the noticee at 8.75 lakhs, was much more than this number. Even if benefit of doubt were to be given to the noticee, at least 4.74 lakh unlisted shares of DASL were delivered on the exchange by the noticee on behalf of C&C. Even this number is by no means insignificant. It is further to be noted that the noticee had sold as much as 5 lakh DASL shares on a single day (11/12/2001).

3.11 It is further noteworthy that the noticee dealt with C&C only during the short period under consideration and that too mainly in the DASL scrip. It is strange, to the say the least, that he had dealt in such large numbers for a new and one-time client. As found by the investigation and admitted by the noticee, he entertained a relative stranger even without following the Know-your-client (KYC) procedures and even without executing an agreement with the client. The factum of his acting as an unregistered sub-broker renders

such transactions as being without competence and to that extent they are irregular. The said irregularity is further heightened by the abrupt manner in which the transactions were executed without following the basic rules of the game. The failure to exercise due diligence coupled with the manner in which the transactions were executed in haste on behalf of a one-time client in the attendant circumstances of the case, seeks to suggest that there is much more to such transactions than what meets the eye.

3.12 The main defence of the noticee is that he dealt in shares of DASL only on one occasion and that he acted as per instructions of the client and that he had no means of verifying the status of shares he delivered in the market. In my view, the one-time transaction of the noticee with C&C is not purely a due diligence issue though it remains a sub-text. In the attendant circumstances of the case, the fact remains that there was a concerted effort by DASL, BBL and C&C to offload unlisted shares in the market with the help of other entities. These three entities have been prohibited from accessing the securities market or dealing in securities by SEBI for violation of the PFUTP Regulations, 1995 vide orders dated March 7, 2007 and October 22, 2007. It is impossible to conceive that DASL, BBL and C&C could have succeeded in their objectives without the active co-operation and assistance of the noticee. The role of persons intermediating in the offloading was equally important to carry it to fruition.

3.13 A person acting as a securities market intermediary is expected to protect the interest of the investors in the securities market in which he operates and it ill-behoves him to become a party to any market misconduct. Such a person is required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings, and not be motivated purely by prospects of financial gain.

3.14 I observe that the proof of fraudulent market activity 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 case of major market misconduct 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.

3.15 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 only one set of entities (in the instant case DASL, BBL and C&C) would be responsible for the misconduct and none else. The involvement of others has to be inferred from the attendant circumstances of the case, more so, when there is a strong demonstration of uncommonness in the manner of execution of the transactions as already detailed.

3.16 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.

3.17 The noticee has contended that he as a sub-broker was in no way connected with the issue of shares or with their subsequent dematerialization. However, as noted above, he was involved in the offloading of the unlisted shares and therefore this contention does not advance his case in any way. In any event, the allegation in the SCN relates to his role in offloading of unlisted DASL shares. He has further alluded to various misdeeds of others. In this regard, it would suffice to note that SEBI has proceeded or is proceeding against various parties for their respective roles in the matter and the present proceedings are limited to the noticee's role.

3.18 The noticee's further contention that he was not in a position to know or inquire or investigate into the motive of his client is basically meant to distance itself from the transactions when the attendant circumstances give the lie to the same.

Conclusion

3.19 The next question is whether the conduct of the noticee 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."

3.20 C&C, the noticee 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 aggregating in number to 98,21,074, out of which 33,33,669 shares were introduced by C&C itself. Out of this at least 4.74 lakh unlisted DASL shares were offloaded by the noticee acting as a sub-broker, albeit without registration, on behalf of C&C within a matter of 3 days. As noted above, as the shares were in the dematerialized form, they were indistinguishable from other validly listed shares of DASL and therefore the irregularity could not immediately be detected by the clearing house or by the counterparty brokers or investors. Further, the fact that the noticee had dealt with C&C, a new and one-time client, on a single occasion in such huge numbers without following KYC procedures or executing agreement with the client or without exercising due diligence clearly points out that he was a necessary party to the offloading which operated as a fraud on unsuspecting investors. The number of unlisted shares palmed off through the noticee to unsuspecting investors amount to at least 4.74 lakhs in number. 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. In this view of the matter, I hold that the noticee is guilty of violating regulation 3 of the PFUTP Regulations, 1995. His act has also resulted in incidental violation of regulation 4 of the PFUTP Regulations, 1995 in as much as their offloading of DASL shares in bulk resulted in spurt in volumes.

3.21 I further note that the noticee is presently registered as a sub-broker of one P. Suryakanth Share and Stock Brokers Pvt. Ltd., member of BSE.

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 noticee had played an important part in the offloading of the unlisted shares of DASL on BSE and hence was part of the outfit designed to cheat the innocent investors.

4.2 As noted above, the noticee has 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 the noticee M/s Shri Parshwa Finance, represented by its proprietor Mr. Piyush Jhaveri, 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 six months.

4.3 This order shall come into effect after the expiry of three weeks from today.

Mumbai

November 8, 2007

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