

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: G. ANANTHARAMAN, WHOLE TIME MEMBER

ORDER UNDER SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST SHRI SHAILESH JHAVERI AND SMT. HARSHA M SHAH IN THE MATTER OF M/S. OJAS TECHNOCHEM PRODUCTS LIMITED

- 1.1 The facts in so far as they are relevant to the present proceedings are stated herein under. Securities and Exchange Board of India (hereinafter referred to as SEBI) noticed substantial increase in the volume/price in the shares of Ojas Technochem Products Limited (hereinafter referred to as OTPL) at the Bombay Stock Exchange Ltd (for short BSE), during the period November 1999 to February 2000 (settlement numbers 37 to 46). The traded volume had increased from 27,500 shares on November 1, 1999 to 33,13,100 shares on February 9, 2000 and the corresponding price increase was Rs. 3.55/- to Rs. 23.60/-. Further, the share price of OTPL had sharply increased (from Rs. 9/- to Rs.18.85) between January 17, 2000 and February 4, 2000 (settlement numbers 44 and 46). The shares of OTPL were also listed on the Vadodara Stock Exchange Ltd. (for short VSE) and Ahmedabad Stock Exchange Ltd. (for short ASE). In view of the above mentioned unusual price/ volume increase, SEBI

conducted investigation to find out as to whether the said increase was due to any manipulation and if so, the role of various entities/persons, including the promoters/ directors of OTPL, if any, in respect of the said increase. During the course of investigation, SEBI had also obtained information in respect of OTPL from the stock exchanges (ASE & VSE), as the promoters / directors of OTPL had failed to cooperate with SEBI. VSE inter alia informed SEBI that OTPL had made preferential allotment of its 60,00,000 equity shares (@Rs.10/-) on January 13, 2000 to various allottees as per the information given below;

Sr. No	Name of Allottees	Share Certificate No. From - To	DNR No. From - To	No. of Shares
1	Nrupesh C. Shah	85001 - 91000	8851051 - 9451050	600000
2	Falguni N. Shah	91001 - 97000	9451051 - 10051050	600000
3	Pratima G. Jhaveri	97001 - 103000	10051051 - 10651050	600000
4	Ankit G. Jhaveri	103001 - 109000	10651051 - 11251050	600000
5	Shailesh S. Jhaveri	109001 - 115000	11251051 - 11851050	600000
6	Harsha M. Shah	115001 - 121000	11851051 - 12451050	600000
7	Annal A. Jhaveri	121001 - 127000	12451051 - 13051050	600000
8	Sheetal A Jhaveri	127001 - 133000	13051051 - 13651050	600000
9	Yogesh K. Bhavnagari	133001 - 139000	13651051 - 14251050	600000
10	Saumil A. Bhavnagari	139001 - 145000	14251051 - 14851050	600000
Total				6000000*

* The shares were listed at VSE on January 17, 2000.

1.2 It has been prima facie alleged that, the aforesaid allotment was without the actual receipt of consideration from the allottees. During the course of

investigation, on a perusal of the bank account (Account No. CD 315) of OTPL maintained with the Punjab National Bank, Ashram Road Branch, Ahmedabad (erstwhile M/s. Nedungadi Bank Ltd.), it was found that amounts equivalent to the consideration received in respect of the preferential allotment (individual allotment) was debited from the aforesaid bank account of OTPL, on the date of its credit. Therefore, it was felt that the account of OTPL was used as a conduit to transfer funds among entities (including allottees). As OTPL had not received the actual consideration in respect of the preferential allotment, it was inferred that the allottees were having close nexus with OTPL and that such an arrangement of allotment of shares without consideration facilitated the promoters/ directors of OTPL to exercise control over the allotted shares which enabled them to offload the shares of OTPL, along with others in the securities market when the prices were jacked up.

- 1.3 It was found that the allottees viz. Shri Shailesh S. Jhaveri and Smt. Harsha M Shah (wife of Shri Shailesh S. Jhaveri), having their address at A/2, Manibhadra Flats, New Gridharpark Society, Ambawadi, Ahmedabad 380006, together sold 12 lakh shares (which were allotted to them by OTPL on preferential basis without the payment of consideration) @ Rs.10.12/- and made a net profit of Rs.69,393 each. The preferential allotment wherein both Shri Shailesh S. Jhaveri and Smt. Harsha M Shah had participated was prima facie found to be a fraud by OTPL as it had allotted shares to allottees (including Shri Shailesh S. Jhaveri and Smt. Harsha M Shah) without the actual receipt of consideration. In view of the above, it has been inter alia alleged that Shri Shailesh S. Jhaveri and Smt. Harsha M Shah had aided and abetted OTPL in its design to cheat the innocent investors and thereby prima facie violated the provisions of Regulations 4 (b) and (d) of Securities and Exchange Board of India

(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as the FUTP Regulations).

- 2.1 Accordingly, a notice dated September 30, 2004 was issued to Shri Shailesh S. Jhaveri and Smt. Harsha Shah (hereinafter collectively referred to as noticees) asking them to show cause as to why suitable directions including directions debarring them from accessing the capital market and dealing in securities should not be issued against them. SEBI had also annexed the copy of the price volume data of the shares of OTPL, and the copies of their statements (to SEBI) alongwith the said show cause notice.
- 2.2 The noticees vide letter dated October 27, 2004 requested SEBI to grant further time to file their replies to the show cause notice and accordingly the noticees were advised by SEBI, to file their reply by November 22, 2004. The statements of the noticees (to SEBI) were again provided to the noticees as requested by them by SEBI vide letter dated November 17, 2004. However, the noticees had failed to submit the reply within the specified time and thereafter, vide letter dated November 24, 2004 (received by SEBI on November 29, 2004), the noticees filed their reply to the aforesaid show cause notice. The submissions made by the noticees in the said letter in brief are as under :
 - i. The noticees stated that though the shares of OTPL were allotted to them on preferential basis, they had not aided and abetted the management of OTPL in any manner whatsoever and that they had made the payments to OTPL in respect of the shares allotted to them. However, they were unable to give the details of the same as they lost their Accountant.

- ii. The noticees contended that there was liquidity in the scrip of OTPL. They admitted that they had sold the shares of OTPL and gained Rs.69,393/- each and that the said amount was negligible when compared to their investment i.e. 60 lacs. The noticees contended that had their intention been to make money they would have sold the shares at a higher price. The notices stated that, since the share price of OTPL had gone up (Rs.23.60) after their selling, investors who had purchased the shares had definitely benefited out of the said purchase.
- iii. The noticees stated that they had sold the shares of OTPL through the stock broker viz. M/s Rajesh N Jhaveri, Member, ASE. According to the noticees the shares allotted on preferential basis were listed. The noticees denied of having any relationship with entities viz. Coverage & Consultants Ltd. and Reliable Plastics Ltd. The noticees further contended that it would be absurd to hold that their sale of 12 lakh shares induced the investors to buy the shares of OTPL.
- iv. The noticees finally urged that they had not acted on behalf of the promoter / director of OTPL and that they had not violated the provisions of FUTP Regulations as alleged.

2.3 The noticees further vide letter dated November 26, 2004 inter alia clarified that they had no knowledge about the fact that the said shares were unlisted in the market and that they had sold the shares on OTPL at the rate of Rs.10.12/- per share.

2.4 SEBI granted an opportunity of hearing to the noticees on February 16, 2005. However, the noticees vide letter dated February 15, 2005 (received by SEBI on February 17, 2005) requested SEBI to postpone the

said hearing and accordingly the same was adjourned from time to time, before the final adjournment on February 10, 2006,. The noticees had again failed to appear before me on February 10, 2006. Shri Shailesh Jhaveri vide letter dated February 8, 2006 (received by SEBI on February 13, 2006), informed that the noticees were not in a position to attend the hearing. It was further stated in the said letter that the noticees had acquired the shares of OTPL only for the purpose of getting maximum benefit of the investment by selling the said shares after some time. He further stated that his father's friend was associated with OTPL and that he had advised him to invest in the preferential allotment.

- 2.5 Though sufficient opportunities of hearing were given to the noticees, they failed to avail the same. In view of the above, I proceed with the subject matter on the basis of the available materials on record including the submissions made by the noticees vide their letters as mentioned above. I noted that, one of the main issues for consideration was whether the noticees had received shares of OTPL (on preferential basis) on January 13, 2000 without the actual payment of consideration. The bank account of OTPL maintained with Punjab National Bank, Ashram Road Branch (erstwhile Nedungadi Bank) showed number of debits (each equivalent to the amount of consideration in respect of the individual allotment) on the same date of credit. Though the noticees claimed that they had made the payment in respect of the aforesaid allotment, they had not produced any documents in support of the same, on the ground of the death of their Accountant. Non submission of the details pertaining to the payment is difficult to countenance as the noticees could have obtained their bank account statement from the concerned bank, which would otherwise prove the payment details and constitute direct evidence. In the meantime, SEBI, in connection with investigation in another case learnt

that, the material information in respect of the consideration of the aforesaid preferential allotment of OTPL was available with Punjab National Bank, Ashram Road Branch (erstwhile Nedungadi Bank) where the bank accounts of OTPL and various other persons including the allottees were maintained. Therefore, SEBI collected details regarding the payment in respect of their preferential allotment from the said bank. The non submission of payment details, by the noticees, was also one of the reasons to go for third party verification and for the collection of the said information/document (with regard to the payment in respect of the preferential allotment of OTPL) from the bank. On a perusal of the said bank account details of OTPL, it was prima facie found that OTPL had not received actual consideration from the allottees and that the account of OTPL was used as conduit to transfer funds among various entities to create a make believe that the consideration was already received by OTPL.

- 2.6 In view of the above, a supplementary notice dated November 17, 2006 was issued to the noticees asking them to show cause as to why suitable directions including directions debarring them from dealing in securities should not be issued against them. The copies of various bank statements (including that of noticees) received by SEBI (subsequent to the earlier show cause notice dated September 30, 2004) along with a chart showing the fund flow which took place on January 11, 2000 and January 12, 2000 were also sent to the noticees along with the said show cause notice for their reply.
- 2.7 Since no reply was received from the noticees, a further opportunity of hearing was granted to them by SEBI on March 15, 2007. The noticees vide letter dated March 8, 2007 (received by SEBI on March 12, 2007) inter alia stated that the show cause notice dated November 17, 2006

leveled fresh allegation of irregular allotment by OTPL. The noticees contended that on submission of the investigation report, the role of the investigating officer ought to have been terminated and that he had become functus officio. They urged that, in the present case, the powers of SEBI were circumscribed by Regulation 12 of the FUTP Regulations and therefore SEBI should not have issued any direction / action other than what had been specified thereof. They also stated that SEBI should have given an opportunity of hearing to them. They contended that the insertion of additional violations of irregular allotment of shares under preferential allotment on the basis of fresh evidences were already made part of the earlier show cause notice dated September 30, 2004 and therefore, the same were revived under the guise of new evidences. They urged that the shares which were allotted on preferential basis were subsequently listed on stock exchanges. It was further submitted by the noticees that M/s Rajesh N Jhaveri through whom they had sold the shares of OTPL had been exonerated by the Enquiry Officer. They also requested SEBI not to proceed with the matter. In the facts and circumstances, another opportunity of hearing was granted to the noticees by SEBI on May 08, 2007. The noticees had again failed to attend the hearing scheduled on May 8, 2007 and vide letter dated April 19, 2007 (received by SEBI on May 3, 2007) inter alia requested SEBI to consider their letter dated March 8, 2007.

- 2.8 I note that sufficient opportunities of hearing were granted to the noticees by SEBI. However, they failed to avail the said opportunities and instead employed dilatory tactics to prolong the proceedings. Therefore, I do not deem it necessary to give another opportunity to the noticees and I proceed in the matter taking into account the materials available on record including the submissions made by the noticees as mentioned above.

2.9 At the outset, I would like to consider the plea raised by the noticees that the supplementary show cause notice dated November 17, 2006 issued by SEBI to the noticees was bad in law, as according to them, pursuant to the submission of investigation report and the hearing, the only course of action available to SEBI was to pass a direction as specified in regulation 12 of the FUTP Regulations. I do not find any force in their argument. The collection of certain details/ information, as mentioned above, from the aforesaid bank was necessitated in the absence of cooperation from the noticees to adduce material evidence in the form of Bank accounts and other material records. Third party verification including from Bank is a necessary tool in the process of investigation for fact finding and becomes a crucial fall – back when the parties charged with the onus, malingering in their commitment through clever ploys in evading the requirements, in a bid to frustrate the investigation. In a case like this, the concerned bank account details of the noticees which are in their possession and domain of control would have provided direct corroborative material evidence on the factum of payment or otherwise for the preferential allotment. The failure to produce the same by the noticees under some pretext or other, besides establishing that they have failed to discharge the initial onus cast on them, discredits their very defense which peters out to be an ipse dixit, not corroborated in material particulars. Thus, the noticees had also failed to produce the details of their payment which was the crucial document / information to ascertain the factum of payment in respect of the preferential shares allotted to them. In the absence of details of payment, it would not be possible to decide the issues covered under the present proceedings. Further, the question as to whether the noticees had paid the consideration towards the preferential allotment of OTPL could be ascertained only from the bank account of OTPL or the noticees without which there would be a vacuum. Further, I note that amounts equivalent to

the consideration for the preferential allotment was debited to the account of OTPL on the same date of credit to various entities, which ultimately landed in the bank accounts of various allottees including the noticees. Though the noticees claimed that they had made the payment towards the preferential allotment of shares of OTPL, they had failed to produce any documents in support of the same contending that they had lost their accountant. Such a plea is not acceptable as the bank account details are basic records which should be either in the possession of the bank or the noticees and even in the event of the death of the accountant, the details can be collected from the bank by any customer. Therefore, the noticees cannot escape from such liability to produce the same by taking such a facile plea. The only inexorable inference arising out of the abject failure of the noticees to provide details is that the noticees had not made the payment but their bank accounts were used as conduits in the money flow among various entities to make it appear that the consideration money was received by OTPL. As the noticees had failed to produce documents/information (documents relating to the payment details in respect of the preferential allotment) which are material in respect of the present proceedings, it can be presumed that the said documents, if produced, would be unfavourable to them. It is well settled that if a party fails to disclose material information exclusively in his / its knowledge or possession, the same can be held against the party with an adverse inference viz. that the disclosure of information would be prejudicial to himself. This adverse inference gets further fortified in the context of the present case wherein it has been proved by documents that the money was credited back to the accounts of the noticees on the date of their alleged payment.

3.1 I note that the Hon'ble Securities Appellate Tribunal (SAT) vide order dated September 17, 2007) in the matter of Shri Gautam N. Jhaveri, Sole Prop. M/s Rajesh N Jhaveri Vs. SEBI (in respect of its dealings in the shares of OTPL) inter alia observed "The Board as a statutory regulator has a duty to protect the interest of investors in securities and to promote the development of and to regulate the securities market by such measures as it thinks fit. If the presenting officer does not place the existing material before the enquiry officer as a result whereof the delinquent intermediary gets absolved or ***where the Board comes across some fresh material on the basis of which it is of the opinion that the charges leveled against the intermediary could be established, it would be open to the Board to order a fresh enquiry or even remit the case back to the enquiry officer for affording an opportunity of the intermediary to respond to the fresh material not already considered. The Board cannot be denuded of this power and a delinquent intermediary cannot be allowed to go scot-free merely because the presenting officer had failed in his duty to present the entire material. The same would hold good if the Board comes across fresh material.*** Allowing the delinquent intermediary to be absolved merely because of the aforesaid reasons may be detrimental to the interest of the securities market and may work against the interest of the investors depending upon the nature of the allegations made." (*emphasis supplied*). Therefore, the plea that SEBI can not act upon fresh material/document is devoid of merit and unsustainable.

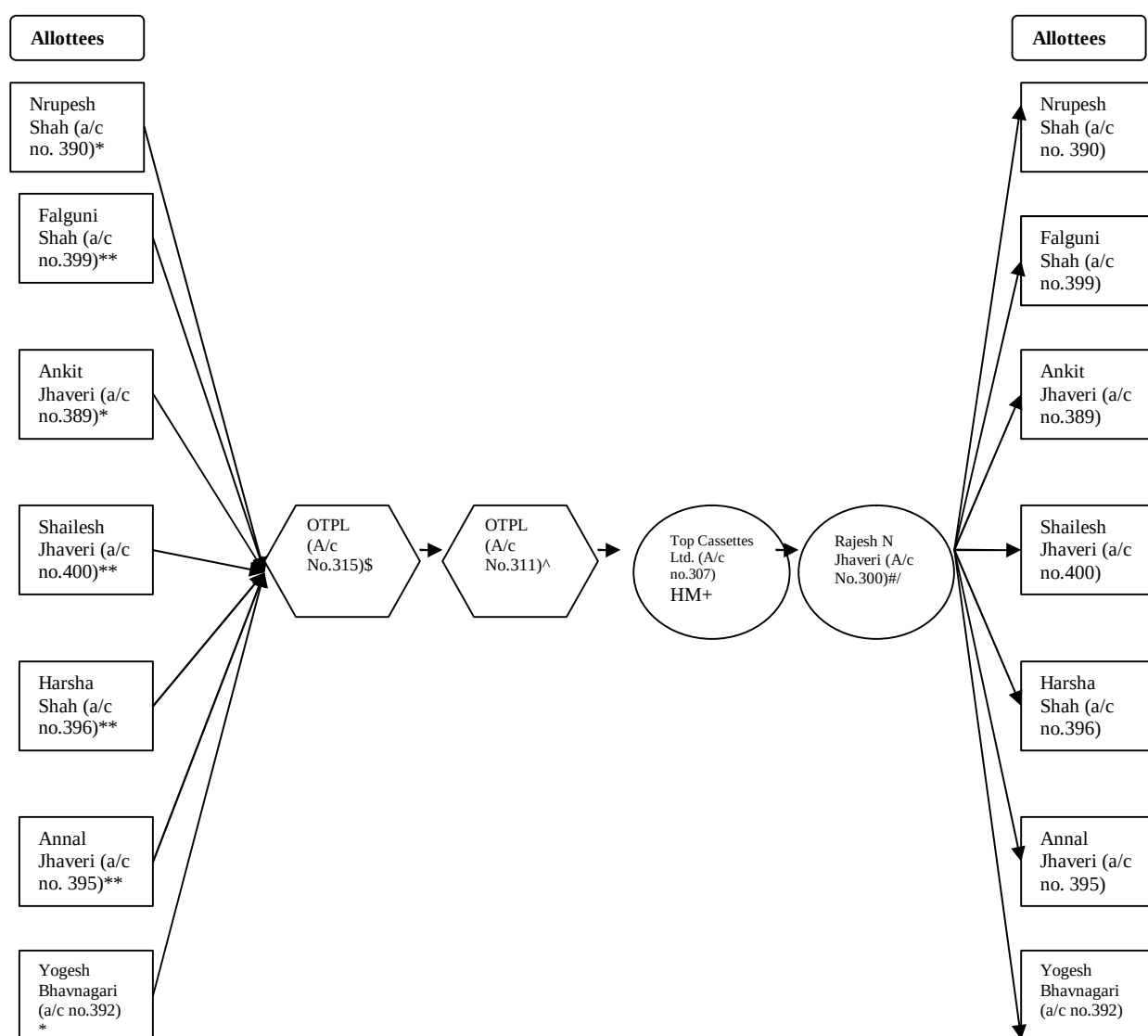
3.2 One of the main issues for consideration is whether the noticees had made the payment towards the consideration in respect of the preferential shares allotted to them by OTPL. In this connection, I note that the details of the said allotment as mentioned in the table at para 1.2 are not

disputed. The entries in the bank account (account no. CD 315) of OTPL maintained with the Ashram Road Branch of Punjab National Bank (erstwhile Nedungadi Bank) ex facie indicate that the consideration for the said preferential allotment was received from/ on behalf of the said allottees, as mentioned below :

Date	Voucher Particulars	Debit	Credit	Balance
	Opening Balance	0	0	0
10/1/2000	By Cash, Self	0	5000	5000
10/1/2000	To transfer CHQ Book Issue Charge	50	0	4950
11/1/2000	By Transfer ANKIT SB 389		3000000	3004950
	By Transfer ANKIT SB 389		3000000	6004950
	To TRANSFER OTPL	3000000		3004950
	To TRANSFER OTPL	3000000		4950
	By Transfer Yogesh SB 392		6000000	6004950
	To TRANSFER OTPL	3000000		3004950
	To TRANSFER OTPL	3000000		4950
	By Transfer N. C. Shah		3000000	3004950
	By Transfer N. C. Shah		3000000	6004950
	To TRANSFER OTPL	3000000		3004950
	To TRANSFER OTPL	3000000		4950
12/1/2000	By Transfer Manoj T. Shah		6000000	6004950
	To TRANSFER OTPL	6000000		4950
	By Transfer Annal A. Jhaveri		6000000	6004950
	To TRANSFER OTPL	6000000		4950
	By Transfer Falguni N. Shah		6000000	6004950
	To TRANSFER OTPL	6000000		4950
	By Transfer Harsha M. Shah		6000000	6004950
	To TRANSFER OTPL	6000000		4950
	By Transfer Fenil Shah		6000000	6004950
	To TRANSFER OTPL	6000000		4950
	By Transfer Shailesh Jhaveri		6000000	6004950
	To TRANSFER OTPL	6000000		4950
13/1/2000	By Transfer Shital Jhaveri		6000000	6004950
	To TRANSFER OTPL	6000000		4950

3.3 Though the details of the above bank statement as above, on the face of it shows the receipt of consideration from the allottees of the preferential shares dated January 13, 2000, on a closer scrutiny of the bank accounts of the allottees, I note that the consideration received by OTPL in respect

of the said preferential allotment from / on behalf of the allottees was ultimately credited back in the bank accounts of the respective allottees on the same day. The chart below establishes the fund flow from / to the account of OTPL and the allottees maintained with Ashram Road Branch of Punjab National Bank (erstwhile Nedungadi Bank).



* The fund flow took place on January 11, 2000.

** The fund flow took place on January 12, 2000.

Member, ASE who dealt in the securities market on behalf of some of the allottees.

\$ First account of OTPL

^ Second account of OTPL

HM+ HM investments in respect of the transactions of Shri Nrupesh Shah

The above fund flow (in respect of a particular allottee) took place on the same date.

All the above mentioned accounts are maintained with Ashram Road Branch of Punjab National Bank and Rs.60 lacs each was transferred.

3.4 The details of the above fund flow, as constructed from the bank statements of OTPL and allottees (including the noticees) of the preferential shares, indicate that the amount credited into the account of OTPL on account of the allottees as mentioned above, under the guise of consideration towards the preferential allotment was promptly returned to their own accounts on the same date. It clearly establishes that OTPL had not received the actual consideration towards the preferential allotment of its shares made on January 13, 2000 from the respective allottees and the allotment made by OTPL on January 13, 2000 was without the consideration. Further the web of transfers in the make – believe of fund flow was meant to create an effect which was otherwise non-existent and the noticees were necessary parties to the same. In the facts and circumstances, it is fairly established that the noticees had not made the payment for the shares allotted on preferential basis by OTPL and that they had facilitated the promoters/ directors of OTPL in their design to defraud the genuine investors. The plea that the persons who purchased the shares from the noticees stood to gain as well in the rising market in the wake of preferential allotment can not confer any legitimacy to their fraudulent activity which triggered the price rise luring the innocent investors.

3.5 I note that the investigation conducted by SEBI revealed that the price of the shares of OTPL had increased from Rs.6.80 to Rs.18.85 between the

settlement numbers 37 to 46 (November 1999 to February 2000). It is an admitted fact that the noticees had sold the shares allotted to them and made a gain of Rs.69,393 each. The contention that the noticees gained only Rs.69,393 which was negligible compared to their investment of Rs.60 lakh each is of no relevance as it has been borne out of bank account details of noticees that they had not paid the consideration in respect of the shares allotted to them by OTPL. In any manner, a person who was found to be a necessary party in the entire gamut of events which ultimately led to the market manipulations cannot seek extenuation of his guilt on the facile but mischievous plea that the profit he had received was negligible.

- 3.6 It is also not correct to contend that the Enquiry Officer had exonerated M/s Rajesh N Jhaveri, Member ASE from the charges leveled against him. In the said matter, an Enquiry Officer was appointed by SEBI to look into the various allegations leveled against him. The said Enquiry Officer vide his report dated March 31, 2005 absolved M/s Rajesh N Jhaveri from some of the charges. The Enquiry Officer found that M/s Rajesh N Jhaveri was guilty of having violated the provisions of Code of Conduct prescribed under the Securities and Exchange Board of India (Stock Brokers and Sub – Brokers) Regulations, 1992 and recommended for the imposition of a minor penalty. However, after the submission of the said enquiry report SEBI received some fresh materials in the form of some bank details of the transactions entered into by the entities who were allegedly involved in the manipulation of the scrip of OTPL. Since the said details were not part of the earlier enquiry, SEBI vide order dated November 14, 2006 directed a de novo enquiry against M/s Rajesh N Jhaveri. Thereafter, the Enquiry Officer recommended for the suspension of certificate of registration of M/s Rajesh N Jhaveri for a period of six months. In the

mean while M/s Rajesh N Jhaveri filed an appeal before the SAT, against the show cause notice dated November 17, 2006 issued by the second Enquiry Officer. The SAT vide order dated September 17, 2007 dismissed the said appeal with the observation mentioned supra (at para 3.2). Therefore, the contention that M/s Rajesh N Jhaveri was exonerated by the Enquiry Officer is at once misleading and incorrect.

- 3.7 I note that substantial trading took place in the shares of OTPL during the said period. It was further observed that the promoters/ director of OTPL had sold substantial number of shares alongwith various other entities. SEBI vide order dated September 27, 2007 restrained the promoters/ directors viz. Shri Jayendra K. Shukla, Shri Alap Shukla, Shri Vinod Shukla and Shri Suresh K. Shukla from accessing the securities market for a period of two years. They were also prohibited from buying, selling or dealing in securities either directly or indirectly for a period of two years.
- 3.8 I note that a total of 94,67,000 shares of OTPL were sold during the above period, out of which 26,44,400 shares were sold by the promoters/ directors of OTPL. Admittedly, the noticees sold the shares allotted to them (12 lakhs) during the said period and made profits. Thereafter, the price of the shares of OTPL had increased substantially. The details of the transactions of the promoter/ directors and the noticees are mentioned below :

NAME OF THE SELLER	RELATION	TOTAL QUANTITY SOLD	BROKER	SUB-BROKER
VINOD SHUKLA	Director	984800	PLPL Shrikant G. Mantri	RAJESH N. JHAVERI
MILAP SHUKLA	Brother of Director, Alap J. Shukla	1143500	PLPL Shrikant G. Mantri	RAJESH N. JHAVERI
HANSA SHUKLA	Ex Promoter/Director and wife of CMD J. K. Shukla	516100	PLPL	RAJESH N. JHAVERI
HARSHA M. SHAH	Allottee in preferential allotment	600000	M.P.VORA	KIRTIKUMAR KANTILAL SHAH

SHAILESH A. JHAVERI	Allottee in preferential allotment	600000	M.P.VORA	KIRTIKUMAR KANTILAL SHAH
TOTAL		3844400		

3.9 I also note that there was a sharp increase in the share price (from Rs.11.20 to Rs.18.85) between the settlement numbers 43 to 46 i.e. between January 10, 2000 to February 4, 2000. The details of the aforesaid transactions in the shares of OTPL were already communicated to the noticees by SEBI. On a perusal of the transaction details in the shares of OTPL, I note that there was a sharp rise in the price / volume of the shares of OTPL during the period of preferential allotment. The share price moved from Rs.11/- from January 20, 2000 to Rs.23/- on February 24, 2000. I note that the total share capital of OTPL eligible for trading in the stock exchange during the period under consideration was 57,50,500 shares only. Further, the preferential allotment was made for 60,00,000 shares in January 2000. The shares allotted on the preferential allotment basis were never listed on BSE wherein the trading took place. Even if, the 60,00,000 shares are considered, the total share capital eligible for trading and delivery (for argument sake) in the market amounts to 1,17,50,500 and out of these shares, 94,67,000 shares (which amounted to 80.56% of the total capital as calculated above) were offloaded by the promoters and other entities including the noticees. I note that the preferential shares allotted to Shri Shailesh Jhaveri and Smt Harsha M Shah was also off loaded in the securities market. It is quite likely that the entire preferential shares allotment to allottees without consideration on January 13, 2000, in an arrangement that facilitated the price rigging of the shares of OTPL was meant to create volume and price rigging. By receiving shares without consideration and by making profits out of the sale of the said shares, the noticees became a necessary party to the

entire manipulation. There was huge liquidity in the shares of OTPL, when the noticees were selling the said shares.

- 3.10 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 trading data and the nature of the transactions etc. 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. Hon'ble Securities Appellate Tribunal (SAT) has observed in the matter of Ketan Parekh Vs. SEBI :

“..... Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.”

- 3.11 Presumption plays a critical role in coming to a finding as to the involvement or otherwise of a market participant in any manipulation. 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 persons/entities alone would be responsible for the manipulation and none else. 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.

3.12 The entire gamut of events commencing from the typical gambit of allotment to a select category, coursing the payment through a web of transfers and retransfers amongst chosen interconnected parties and finally culminating in the grand finale of the whole manipulative scheme to wangle patently unfair gains in the market at the cost of innocent investors, would clearly establish that the noticees were necessary parties in the machinations of market manipulation to the detriment of unsuspecting investors. The noticees acted to gain profits for themselves in collusion with the management of OTPL. From the attendant circumstances it is borne out that, inter alia the trades of the noticees in the shares of OTPL created misleading appearance of trading in the securities market and that they had entered into the sale of the said shares intending to operate only as a device to inflate, depress, or cause fluctuations in the market price of the said shares.

3.13 In view of the foregoing, it is fairly established that the noticees have facilitated OTPL in its bid to defraud the genuine investors. Considering the above, I am persuaded to conclude that the noticees viz. Shri Shailesh Jhaveri and Smt Harsha M. Shah, having their address at A/2 Manibhadra Flats, New Girdharpark Society, Ambawadi, Ahmedabad – 380 006, have violated the provisions of Regulations 4 (b) and (d) of

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and in the facts and circumstances, I hereby pass the following directions against them.

4.1 Therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Section 11B of the Securities And Exchange Board of India Act, 1992 read with Regulation 11 of the Securities And Exchange Board of India (Prohibition of Fraudulent and Unfair Practices Relating to Securities Market) Regulation, 2003, I, hereby direct that Shri Shailesh Jhaveri (Permanent Account No.ADTPJ0210B) and Smt Harsha M. Shah (Permanent Account No.AAUPJ8953B) 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 two years.

4.2 This order shall come into force with immediate effect.

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

Place: Mumbai.

Date: November 13, 2007.