

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: T.C. NAIR, WHOLE TIME MEMBER

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

AGAINST Mr. MURALI NAIR

**RE: HIS ROLE AND DEALINGS IN THE SCRIP OF
DESIGN AUTO SYSTEMS LTD.**

TCN/71/IVD-3/12/07

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 Coverage & Consultants Ltd. (C&C) on 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 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 malpractices committed by DASL, BBL, C&C 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 them 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 DASL and its directors was dated June 30, 2005. The same SCN was also addressed to Mr. Murali Nair, who allegedly was a conduit between DASL, BBL and other entities involved in the case.

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. The present proceedings against Mr. Murali Nair have also been delayed for the same reasons that occasioned delay in proceedings against DASL, as the roles of DASL and Mr. Murali Nair were inextricably interlinked in the alleged transactions.

2.0 Notice, hearing and reply

2.1 The following are the main allegations made in the show cause notice dated June 30, 2005 issued to Mr. Murali Nair (which was the same as the one issued to DASL and its directors):

- (a) Preferential allotment of 10 crores shares was made by DASL to BBL on a swap basis on October 29, 2001. These shares were not granted listing permission in BSE, though they were listed in MPSE. No listing application was made to ASE. However, trading permission was not granted by any exchange.
- (b) During the period of investigation i.e. August 2001 to January 2002, though there was no substantial price movement in the shares of DASL, there was a spurt in volumes. The fall in price and the spurt in volumes were due to continuous off-loading of the unlisted shares of DASL allotted to BBL.

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

the stock exchanges. Thus, it can be concluded that the document was fabricated.

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

may also be noted that BBL and C&C shared the same address at Indore. The detail of Directors as provided by BBL appears to be completely false as from the Form No. 2 and Form no. 23 submitted by the company to ROC vide their letter dated 18.01.2002. It is also seen that the papers were presented by one Mr. Arvind Vaswani as Director of BBL. The copies of these papers have been forwarded by BBL vide their letter dated 14.11.2003. In addition to that Mr. Sarvesh Garg, Managing Director of DASL mentioned in his statement recorded by SEBI on 28.01.2004 that Mr. Arvind Vaswani had joined BBL as a professional Director sometime in November 2001. However, he seemed to have resigned from the Board of BBL in January 2002. The name of Mr. Arvind Vaswani is not appearing in the list of Directors as submitted by BBL and the information submitted by BBL in this regard is false.

- (j) The client registration form entered into between BBL and CD Equisearch P Ltd was also scrutinized. The Agreement has been signed by one Mr. Manish Ganeriwala as Director of BBL. Vide Board Resolution dated June 05, 2001 (copy enclosed with member Client Agreement Form) of BBL, Mr. Manish Ghaneriwala has been authorized as Director to sell the shares of DASL on behalf of the company i.e. BBL. The Agreement is dated October 11, 2001. From the aforementioned facts it was concluded that Mr. Manish Ganeriwala was also the Director of BBL. The copy of Resolution has been signed by Mr. Arvind Vaswani as Director. Hence the information supplied by BBL cannot be relied upon. Mr. B P Inani, Authorised Representative of CD Equisearch P Ltd in his statement has also confirmed that Mr. Manish Ganeriwala was on the Board of BBL.
- (k) From the demat account of BBL, where 10 crores equity shares of DASL were credited, 6 crore shares were transferred to various entities for off-loading in the market. The details of the transfer from demat account of BBL are as under:

Table A

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

Table B - I

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

Table B - II

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

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

Details of transactions in DP a/c of BBL during the relevant period is as below:

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

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

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

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

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

Date	Recd. from	Transferred to	No. of shares	Balance
13.11.2001	BBL		50,00,000	

12.12.2001	Murali Nair		1,00,000	51,00, 000
13.12.2001		Delivered in Market	23,100	
12.01.2002		CDSL a/c of DG Goenka	76,900	50,00,000
12.01.2002		Delivered in market	5,16,541	
14.01.2002		Delivered in market	2,17,000	42,66,459
15.03.2002		BBL	42,66,459	Nil

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

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

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

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

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

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

	BBL		10,00,000	NIL
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- (m) A reconciliation of the transfer of 10 crore unlisted shares from BBL's demat account was also worked out in the SCN from the available data, which is as under:

Reconciliation of transfer of 10 crore shares of BBL

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

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

- (n) The role of Mr. Murali Nair who was an employee of DASL in the alleged off-loading by BBL was given in detail. It was observed that one DG Goenka Equities P Ltd., a stock broker to whom 50 lakh shares were transferred by BBL had stated to SEBI that the transfer was made pursuant to instructions of Mr. Murali Nair and Vargin Finance P. Ltd. Mr. Manoj Ganeriwala, a person to whom BBL transferred another 50 lakh shares had also given the name of Mr. Murali Nair, as being responsible for the transfer. Further, Mr. Murali Nair had himself transferred 10 lakh shares to Mr. Ganeriwala, which the latter claimed to be a mistake. The said shares were eventually returned to Mr. Nair. It was concluded that

BBL was assisted by DASL through its employee Mr. Murali Nair in the process of off-loading of unlisted DASL shares in the market.

(o) It was observed that a clear nexus was indicated between DASL and BBL in activities pre and post the swap allotment of shares, as seen from the following:

- (i) Matching addresses of Murali Nair, DASL and BBL as mentioned by Mr. Murali Nair while opening de-mat account CDSL.
- (ii) Mr. Murali Nair dealt with brokers on behalf of BBL.
- (iii) Mr. Arvind Vaswani, employee of DASL was appointed on Board of BBL and actively participated in off-loading the unlisted shares.

(p) Besides giving electronic credit on November 10, 2001 to BBL's demat account, DASL also issued a jumbo share certificate for 10 crore shares to BBL on October 29, 2001 and a copy of this certificate was enclosed along with listing application made on December 20, 2001 to BSE. The registrar of DASL, Ankit Consultancy Ltd. denied that any physical certificate was issued to BBL and they stated that DASL approached them for dematerializing the said 10 crore shares by their letter dated November 07, 2001. Thus, it was concluded that electronic credit was done with fraudulent intent to facilitate off-loading unlisted shares of DASL by BBL, even though the jumbo physical certificate was issued earlier. This fact also points to the nexus between BBL and DASL in the alleged off-loading.

(q) Details were also given regarding transactions of VFPL in which Mr. Prashant Rajgaria (a director of DASL) was a director.

(r) In view of the above, it was concluded that Mr. Murali Nair was the person coordinating with all other entities on behalf of BBL and DASL and that he was an accomplice to the management of BBL and DASL in attempting to

perpetuate and propagate the fraud of offloading unlisted shares in the market and functioned as a conduit in their nefarious designs.

- (s) It was therefore alleged that Mr. Murali Nair, among others, had violated regulations 3 and 4(a) to (d) of the SEBI (PFUTP) Regulations, 1995. In view thereof, Mr. Murali Nair was called upon to show cause why suitable directions including restraining him from accessing the capital market and prohibiting him from buying, selling or dealing in securities for a specified period should not be issued under sections 11(4)(b) and 11B of the SEBI Act read with regulation 11 of the SEBI (PFUTP) Regulations, 2003.

2.2 In response to the show cause notice, no reply was received for a considerable length of time. Several hearing notices were also issued to Mr. Nair, including one for a hearing scheduled before me on October 18, 2006. Mr. Nair did not attend any of the scheduled hearings. Eventually he submitted a reply to the show cause notice, which was dated December 06, 2006. The main contentions raised by Mr. Nair in his reply are as follows:

- (a) He contended that the show cause notice was initiated pursuant to dematerialization of 10 crore DASL shares, which ought not have been dematerialised by CDSL. After such dematerialization he could not be made liable in any manner.
- (b) He contended that he was working with DASL as Officer-Secretarial from 1994 till October 2001, during which period he discharged Secretarial duties for DASL. He left DASL and started his own consultancy since November 01, 2001, after which he acted as a consultant for BBL and its directors. He therefore contended that he was not an employee of DASL during the relevant time.
- (c) Regarding para. 30 of the SCN (wherein it was alleged that he was an employee of DASL and had dealt with some brokers on behalf of BBL), Mr. Nair admitted that he was an employee of DASL. He

further submitted that he had interacted with various brokers on behalf of BBL and its directors as per instructions received from Mr. Sharad Gujarathi (who was a director of BBL).

- (d) Regarding the allegation of opening two demat accounts at the behest of DASL and BBL, he contended that he had opened the demat account with CDSL at the instance of Mr. Sharad Gujarathi and permitted Mr. Gujarathi to open such account without any knowledge of fraudulent designs of BBL. He also had no knowledge regarding mistake made by CDSL or alleged designs of BBL/DASL and its directors. He admitted that he was paid a sum of Rs. 3500/- per month by BBL. He further contended that no consideration was paid by Mr. Gujarathi for transactions done through his account and he did not know that the transactions were of allegedly 'non transferable' DASL shares. Further, as regards the NSDL account, he contended that it was opened as he had requested Mr. Sarvesh Garg (Managing Director of DASL) to transfer 25000 DASL shares from his personal account as a loan, with the intention that they will be returned to Mr. Garg when the share price went up, with a profit of Rs. 5/- per share. He further clarified that these shares were never dealt by him and were returned to Mr. Garg after sometime.
- (e) Regarding the matching address given to SEBI in his sworn statement, he contended that the office address of DASL was inadvertently given as his residential address, as during that period he was shifting his residence.
- (f) Regarding the transactions in unlisted DASL shares done through his CDSL account, he contended that he had no right, title or interest in those shares and the account was used by Mr. Sharad Gujarathi for his own purposes. He further contended that he did not know that the shares were not tradable. He denied that he was a conduit between DASL, BBL or other entities.

- (g) Regarding the same address given by BBL while opening its demat account with CDSL, he contended that he was not aware of the same and was not responsible for the incorrect address given by BBL to CDSL. He further contended that it was the responsibility of CDSL to have verified the address given by BBL. He further contended that he co-ordinated and interacted with various entities on behalf of and as per instructions given by Mr. Sharad Gujarathi and had no personal interest in the same.
- (h) He denied that he was involved in offloading unlisted shares and denied having violated the PFUTP regulations.
- (i) He further denied that there was any nexus between DASL and BBL.

3.0 Consideration of issues

3.1 I have taken into consideration the SCN, the reply thereto and other materials on record. My findings are as under:

Preferential allotment and surrounding events

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

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 offloaded 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 The first major allegation against Mr. Nair is that, he was the Executive Officer (Secretarial) of DASL during the relevant point of time and as such, he was party to the allotment made by DASL to BBL. Mr. Nair has contended that he worked with DASL only till October 2001. This was also the contention raised by DASL during the separate proceedings initiated against it and concluded by order dated March 06, 2007. As found in that order, this contention is not borne out by the facts. In the Annual Report of DASL for the year 2001-02 it was mentioned that Mr. Murali Nair was the Executive Officer (Secretarial) of DASL. This statement finds place under the head 'Report on Corporate Governance' which was authenticated as late as August 29, 2002 by the statutory auditors. It may be recalled that by this date all material transactions of this case had taken place. Therefore, the irresistible conclusion is that Mr. Murali Nair was in the employment of DASL at all material points of time, as also found in that order.

3.6 As per Mr. Nair's own admission in the sworn statement given to SEBI, he was solely in charge of transacting with Ankit Consultancy Pvt. Ltd., the registrar and share transfer agent to DASL. He has admitted to have dealt with Ankit Consultancy for dematerialization of shares on behalf of DASL and BBL, among others. Thus, Mr. Murali Nair was the point-man of DASL in the allotment and subsequent dematerialization of the 10 crore shares.

3.7 As noted in the earlier order passed against DASL, the allotment was only a ruse to offload unlisted shares to innocent investors and had no passable commercial reason. Further, the allotment of the same shares twice, once in

the physical form of a jumbo certificate and once more in the dematerialised form cannot but lead to the conclusion of the fraudulent intent of the parties. Being the Executive Officer (Secretarial) of DASL, Mr. Murali Nair cannot distance himself from the fraudulent allotment made by DASL to BBL, including allotment of the same shares both in the physical and dematerialised form.

3.7 The transactions in the NSDL account of Mr. Murali Nair, in which 25000 DASL shares were received from the personal account of Mr. Sarvesh Garg (MD of DASL) and returned back to him, show the strong personal relationship between Mr. Nair and Mr. Garg. This transaction was pursuant to an arrangement of loan, as per Mr. Murali Nair. When viewed in perspective, it is a highly dubious one, whereby Mr. Nair was allegedly supposed to return the shares to Mr. Garg, giving Rs. 5/- or Rs.6/- per share, when the share price went up. It therefore cannot be accepted that Mr. Nair was unaware of the goings on in DASL. On the contrary, it is clear that he was part and parcel of the various irregularities which took place within DASL in connection with the allotment of 10 crore shares made to BBL.

Transactions subsequent to the preferential allotment

3.8 Mr. Murali Nair was also closely associated with the offloading activities indulged in by BBL and its directors. Huge quantities of unlisted DASL shares were transacted through the CDSL account of Mr. Murali Nair as already seen from para. 2.1(l) above. He has consistently admitted in his sworn statement given to the investigation team and in the written reply filed in the present proceedings that he had interacted with various brokers on behalf of BBL and its directors at the instance of Mr. Gujarathi. It is significant to note here that the relevant transactions in respect of which he had so interacted related to offloading of unlisted DASL shares. The transactions in the CDSL account of Mr. Murali Nair are reproduced below for ready reference:

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

3.9 These transactions cannot be explained away by any person who is the owner of the demat account, much less a secretarial professional such as Mr. Murali Nair, on the ground that all transactions were done by someone else. Even if he were a mere name lender, such name-lending is a sufficiently exceptionable act, for the importance of correct client identification from the point of view of securities market and anti-money laundering regulation cannot be overemphasized.

3.10 However, as would be seen from the entire conspectus of the case, Mr. Murali Nair was much more than a mere name-lender.

3.11 The transactions in this account have to be seen in conjunction with the sequential developments relating to the DASL scrip, which may be outlined as follows:

Date	Event
29.10.2001	Allotment of 10 crores DASL shares made to BBL on swap basis. Jumbo share certificate issued by DASL to BBL for the said shares.
01.11.2001	DASL makes listing application to MPSE in relation to said shares.
05.11.2001	MPSE grants listing permission for the said shares.
10.11.2001	CDSL credits 10 crores DASL shares to the demat account of BBL
13.11.2001	BBL makes substantial off-market transfers of DASL shares to three parties, i.e. 50 lakhs shares to Mr. Murali Nair, 50 lakhs shares to the joint account of Mr. and Mrs. Ganeriwala and 50 lakhs shares to one M/s DG Goenka Equities Pvt.

	Ltd.
12.12.2001	Out of the 50 lakhs shares so transferred, Mr. Murali Nair transfers 10 lakhs shares to the joint account of Mr. and Mrs. Ganeriwala. He also transfers 1 lakh shares to DG Goenka Equities Pvt. Ltd., which was a stock broker in which Mr. Ganeriwala was a director.
20.12.2001	DASL makes listing application to BSE.
29.12.2001	Mr. Murali Nair returns 39 lakhs shares to BBL.
08.01.2002	CDSL freezes BBL's demat account.
14.01.2002	BSE suspends trading in the DASL shares.
	Subsequently, various parties return the shares transferred to them with a view to eventually return them to the account of BBL. However, as mentioned in para 2.1(d) a total of 98,21,074 shares remained unaccounted for. In line with this general trend, Mr. Murali Nair took back 10 lakh shares from Mr. and Mrs. Ganeriwala on 14.03.2002 and there after returned them to BBL.

3.12 The following points are noteworthy in the above transactions:

- a) Barely three days after the demat credit of 10 crore shares on 10.11.2001, BBL transferred 1.5 crores shares to three parties including Mr. Murali Nair. The other two parties had also stated that the transfers were made to them pursuant to instructions of Mr. Murali Nair.
- b) Such transfers continued to be made to various other parties and BBL had eventually transferred 6 crore shares out of the 10 crores allotted to it.
- c) Mr. Nair transferred 10 lakh out of the 50 lakh DASL shares transferred to by BBL to Mr. and Mrs. Ganeriwala on 12.12.2001. On the same day, he also transferred 1 lakh shares to DG. Goenka Equities Pvt. Ltd.
- d) He retransferred 39 lakh shares to BBL on 29.12.2001. Barely 10 days later, CDSL froze BBL's demat account and shortly thereafter trading in the DASL scrip was suspended by BSE.

- e) Much after the suspension of trading in the scrip, Mr. Manoj Ganeriwala retransferred 10 lakh shares to Mr. Murali Nair on 14.03.2002. This was returned by Mr. Murali Nair to BBL.

3.13 From the above it is clear that BBL was in a haste to offload the unlisted DASL shares preferentially allotted to it in the market and make a killing out of such offloading at the expense of innocent investors. Thus, it transferred huge quantities of unlisted shares to various parties including Mr. Murali Nair. The idea was to eventually offload them in the market through a network of entities so as to avoid the audit trail. Accordingly, Mr. Murali Nair further transferred huge quantities of shares to Mr. and Mrs. Ganeriwala and to DG Goenka Equities Pvt. Ltd. As may be seen from para. 2.1(m), these persons were responsible for offloading of huge quantities of unlisted shares (8,75,000 shares and 8,33,541 shares respectively). However, when further offloading was prevented due to actions of BSE and SEBI, especially by the former's suspension of trading in the DASL scrip, the various parties returned the remaining unlisted DASL shares back to BBL through the same route by which they were received and exited the scene. Mr. Murali Nair had retransferred the 39 lakh shares which were not passed on to further entities back to BBL probably in view of the impending action by CDSL and BSE. Mr. Ganeriwala further returned the 10 lakh undelivered shares back to Mr. Murali Nair, which he duly returned to BBL.

3.14 Further, as noted in the show cause notice and not denied by Mr. Murali Nair, Mr. Ganeriwala has stated that Mr. Murali Nair was responsible for the transfers of 50 lakh shares directly from account of BBL and another 10 lakh shares from account of Mr. Murali Nair to his joint account with his wife and that both the transfers were on account of mistake. I note that the version of mistaken transfer advanced by Mr. Ganeriwala was not found worthy of acceptance by SAT¹ and by SEBI². The point however is that Mr.

¹ Order dated August 21, 2006 in Appeal no. 153/2005.

Murali Nair is closely involved with Mr. Ganeriwala. As stated by Mr. Ganeriwala, their association started from the relationship as client of Mr. Murali Nair with DG Goenka Equities Pvt. Ltd., which was a stock broker in which Mr. Ganeriwala was a director and went so far that Mr. Ganeriwala parted with his personal DP ID details to Mr. Nair.

3.15 Another 50 lakh shares which were transferred by BBL to DG Goenka Equities Pvt. Ltd. were also stated by the latter to have been transferred at the instance of Mr. Murali Nair. They had further stated that Mr. Murali Nair used to deal with them on behalf of BBL and Vargin Finance Pvt. Ltd., which is an associate of DASL. They further stated that the transfer of 50 lakh DASL shares was towards margin requirements and future market obligations of BBL. This has also not been specifically denied by Mr. Murali Nair.

3.16 Mr. Murali Nair seeks to sweep all the above facts under the carpet by taking a stand that the his demat account was opened and operated at the instance of Mr. Sharad Gujarathi “for his own purposes”. This contention is unacceptable for more than one reason, such as the following:

- a) He was a consultant to BBL and not a mere lay person. It is not within the normal scope of activities of a consultant to open a demat account and leave it to be used for the purposes of his client, which was purportedly not monitored. This is all the more an obvious afterthought when it has eventually transpired that the purpose for which it was used was illegal and was to defraud innocent investors by saddling them with unlisted shares.
- b) He has admitted that he dealt on behalf of BBL with various brokers. Such dealings were in the course of offloading unlisted shares. Such an

² Order no. WTM/GA/36/IVD/11/07 dated November 7, 2007.

active role in the offloading is inconsistent with his version of being a mere name lender.

- c) As noted above, he was also the Executive Officer (Secretarial) of DASL and thus was aware of the dubious nature of the preferential allotment made to BBL.

Summation and conclusion

3.17 As seen from the above, the following stand established:

- a) Mr. Murali Nair was a Executive Officer (Secretarial) of DASL during the relevant period. He was also a consultant to BBL during the same period and acted as a conduit between the two. He also drew remuneration from both of them.
- b) During the course of his activities as Executive Officer (Secretarial) of DASL, he was the sole person interacting with Ankit Consultancy Ltd., the RSTA of DASL, by his own admission. Such interaction was admittedly on behalf of DASL, BBL, the MD of DASL and Vargin Finance Pvt. Ltd., which was an associate of DASL. As such, he can be taken to be aware of all aspects of allotment and dematerialization of shares by DASL and BBL.
- c) He had close relationship with Mr. Garg who was the MD of DASL and had opened a demat account in his name at the former's instance and accepted 25000 DASL shares from him without consideration, pursuant to a dubious arrangement.
- d) By his own admission, he also had close relationship with Mr. Sharad Gujarathi, MD of BBL, so much so that he purportedly permitted him to open and operate a demat account in his name, without raising any questions.

- e) He had admittedly interacted with various brokers on behalf of BBL. Such interaction was in the course of offloading unlisted DASL shares, when seen in light of all circumstances.
- f) Huge quantities of unlisted DASL shares passed through his CDSL demat account during the relevant period. He passed on shares to Mr. and Mrs. Ganeriwala and to DG Goenka Equities Pvt. Ltd., both of whom were responsible for huge quantities of such unlisted shares being delivered in the market, as seen from para. 2.1(m). As per the statements of both these parties, he was further instrumental in transfer of 50 lakh shares each to them by BBL. These vital facts have not been disputed by him either before the investigation team or in the present proceedings.

3.18 From the above it is very clear that Mr. Murali Nair was closely involved at both stages – that of initial preferential allotment and dematerialization by DASL and that of subsequent offloading of unlisted shares by BBL and other entities. He also acted as the vital link between DASL and BBL in the entire exercise.

3.19 The next question is whether the conduct of Mr. Murali Nair 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 Mr. Murali Nair, BBL and other entities who were part of the grand design to offload 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 8,75,000 shares were routed through Mr. and Mrs. Ganeriwala and another 8,33,541 shares were offloaded through DG Goenka Equities Pvt. Ltd. As noted above, as the shares were in the dematerialized form, they were indistinguishable from other validly listed shares of DASL. Further, the close nexus observed between Mr. Murali Nair and DASL on one hand, and Mr. Murali Nair and BBL on the other, shows that Mr. Murali Nair was part of a grand design to defraud investors by palming off the unlisted shares for unjust and unfair gains at the cost of lay investors, alongwith DASL, BBL and other entities. In fact, he was involved even at the earlier stage of allotment and dematerialization of the concerned shares, which when seen in context, was with a view to their eventual offloading to innocent investors. Thus, his 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 Mr. Murali Nair is guilty of violating regulation 3 of the PFUTP Regulations, 1995.

3.21 The act of offloading has also resulted in incidental violation of regulation 4 of the PFUTP Regulations, 1995 in as much as the offloading of DASL shares in bulk resulted in spurt in volumes.

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, Mr. Murali Nair played an important part in the allotment, dematerialization and subsequent off-loading

of the unlisted shares of DASL in BSE and is an integral part of the massive fraud played on innocent investors.

4.2 As noted above, Mr. Murali Nair 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 Mr. Murali Nair shall not access the capital market, or buy, sell or deal in securities in any manner directly or indirectly for a period of six years from date of this order.

4.3 This order shall come into force immediately.

Mumbai

December 27.12. 2007

T.C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA