

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. T. C. NAIR, WHOLE TIME MEMBER**

**IN THE MATTER OF VIVENSARI FINANCIAL SERVICES PRIVATE LIMITED,
HARSHA PRANAV SECURITIES PRIVATE LIMITED AND NEWFIN
FINANCIAL SERVICES PRIVATE LIMITED**

IN THE SCRIP OF ELECTROLUX KELVINATOR LIMITED

ORDER

**DIRECTIONS UNDER SECTIONS 11B AND 11 (4) OF THE SECURITIES AND
EXCHANGE BOARD OF INDIA ACT, 1992**

1. The investigations in the dealing in the scrip of the company was initiated by the Securities and Exchange Board of India ('SEBI' for short) based on an investigation carried out by National Stock Exchange ('NSE' for short) for the period from August 02, 2000 to September 05, 2000 wherein it was observed by the NSE that on August 09, 2000 the quantity traded in the scrip witnessed a sudden spurt. Based on the price volume chart analysis, the period from February 01, 2000 to March 31, 2000 was also included for the purposes of investigation. Further, NSE forwarded another investigation report for the period November 08, 2000 to March 20, 2001. Therefore, the period of investigation by the SEBI pertains to the following periods:

- a) February 01, 2000 to March 31, 2000 – Phase I
- b) August 02, 2000 to September 05, 2000 – Phase II
- c) November 08, 2000 to March 20, 2001 – Phase II

2. The investigation report reveals that the company, M/s. Electrolux Kelvinator Limited was incorporated in August 1989 as Maharaja International. The company came out with a right issue of equity shares aggregating to Rs.34.16 crores offered at Rs.10/- each at par in the ratio of 1:1 to the existing shareholders. Further during December 1999, the company came out with another rights issue in the ratio of 1:1 offered at Rs.10/- each at par to the existing shareholders. The company has a capital of Rs. 135.94 crores and is listed in the Mumbai, Delhi, Calcutta, Ahmedabad, Bangalore, Jaipur Stock Exchanges and NSE.

3. The investigations further revealed that M/s. Harsh Pranav Securities Private Limited (herein after referred to as HPSPL), M/s. Newifn Financial Services Private Limited (herein after referred to as NFSPL) and M/s. Vivensari Financial Services Limited (herein after referred to as VFSPL) all having their address at 419, Kuber Towers, Narayanguda, Hyderabad - 500029 (all the three clients are jointly called 'the entities' or 'clients' for brevity) were trading through different brokers/members and alleged to have directly or indirectly entered into transactions in the scrip of EKL with the intention of artificially manipulating the market, indulged in acts calculated to create a false or misleading appearance in the trading in the scrip of the company and entered into purchase or sale of the same not intending to effect transfer of beneficial ownership but operated only to cause fluctuations in the market price of the scrip, thereby contravening the provisions of Regulation 4 (a), (b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995.

4. The clients VFSL, NFFSPL and HPSPL purchased approximately 6 lakh shares on cum-rights basis from M/s Ankur Finlease, Delhi. Acquisition for a further 20 lac cum-rights shares was made from M/s Harish Kumar & Associates with the funding for the same coming from M/s Shalibhadra Securities Ltd. (vide pay order nos. 174180 to 174185 dated 24.12.1999). After getting these shares transferred in their name, application for rights was made. After the rights issue,

these three clients along with M/s Shalibhadra Securities Ltd. had approximately 45 lakh shares of EKL. Part of the source of funds for making the purchases as well as for applying for the rights (as stated by the clients in their statement was received from M/s. Shalibhadra Securities Ltd. as affirmed by Shri Hemendra Shah (Director of Shalibhadra in his statement). M/s. Shalibhadra Securities Ltd. was a defaulting broker of the NSE through whom the shares were subsequently sold in the market.

5. Linkages between the clients - The three clients, VFSL, HPSP and NFFSP are associate / group companies which was also agreed upon by them in their statement. The three entities have common promoters / directors among themselves as brought out in the table below:

Directors of VFSL	Directors of HPSP	Directors of NFFSP
R. Venkat Rao	A. Rajendra Prasad	G.S.Sridhar
A. Rajendra Prasad	P.V.Murali Krishna	A. Rajsekhar Reddy
P.V.Murali Krishna		P.V.Murali Krishna

6. Trades between the clients at NSE: The clients VFSL, HPSP and NFFSP were found to have traded extensively in the scrip of EKL through various brokers of NSE. From the overall trading pattern, it was observed that while one of the related clients was purchasing the shares, the other related clients were selling these shares. An illustration of this, for some of the settlements, is given in the table below:

SETT No.	SETTLEMENT WISE CLIENT'S NET POSITION		
	VFSL	HPSP	NFFSP
2000046	-641900	696161	125000
2000047	-432500	201999	232500
2000048	156439	-163500	0
2000049	-221496	165000	0
2000050	-630731	389908	0
2000051	-547004	289851	0
2000052	-550000	450945	0
2000053	-655000	492489	0
2001001	-750000	545988	0

2001002	-738853	338300	0
2001003	-722800	554046	0
2001004	-98850	0	0
2001005	-837740	530887	0
2001006	-871751	690423	0
2001007	-1157758	1078410	0
2001008	-881170	374661	0
2001009	-342000	-435549	0
2001010	-80000	0	0
2001011	-113978	0	0

While M/s VFSL was a net seller, M/s HPSPL and M/s NFFSPL were net buyers. As the three clients have been shown to be related to each other, the sales and purchases made by them were effected with an intention to generate volumes in the market. As brought out in the NSE reports, on many of the settlements and trade dates, these three related clients were appearing on both the buy and the sell side. By way of illustration, the following table is given:

SETT. NO.	TRADE DATE	BUY CLIENT	SELL CLIENT	QTY TRADED	NO. OF TRADES
2000046	13-11-00	VFSL	VFSL	142100	11
2000046	14-11-00	HPSPL	VFSL	199522	4
2000047	15-11-00	VFSL	VFSL	200000	6
2000047	16-11-00	NFFSPL	VFSL	100000	2
2000047	17-11-00	HPSPL	VFSL	50000	1
2000047	21-11-00	HPSPL	VFSL	96699	2
2000048	23-11-00	HPSPL	VFSL	24800	2
2000051	15-12-00	HPSPL	VFSL	2500	1
2000052	22-12-00	HPSPL	VFSL	99900	5
2000053	01-01-01	HPSPL	VFSL	2000	2
2000053	02-01-01	HPSPL	VFSL	5000	1
2001001	03-01-01	HPSPL	VFSL	6000	3
2001001	08-01-01	HPSPL	VFSL	44044	8
2001003	17-01-01	HPSPL	VFSL	73700	1
2001003	18-01-01	HPSPL	VFSL	50000	
2001003	22-01-01	HPSPL	VFSL	50500	1
2001004	24-01-01	HPSPL	VFSL	244500	7
2001005	31-01-01	HPSPL	VFSL	49714	1
2001005	05-02-01	HPSPL	VFSL	21786	9
2001005	06-02-01	HPSPL	VFSL	71300	3
2001006	07-02-01	HPSPL	VFSL	300864	21
2001006	09-02-01	HPSPL	VFSL	15650	3
2001007	14-02-01	HPSPL	VFSL	205592	14
2001007	16-02-01	HPSPL	VFSL	48950	1

2001008	22-02-01	HP SPL	VFSL	493697	11
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7. SETTLEMENT WISE-DEMAT ANALYSIS: The settlement-wise analysis of the demat statements of the three related clients reveals the following:

Settlement No. 2000046:

SETT No.	SETTLEMENT WISE CLIENT'S NET POSITION		
	VFSL	HP SPL	NFFSPL
2000046	-641900	696161	125000

- i) As seen from the table above, in settlement No. 46 (NSE), M/s VFSL had a net sell position of 6,41,900 shares whereas both M/s HP SPL and M/s NFFSPL had a net buy position of 6,96,161 shares and 1,25,000 shares respectively.
- ii) From the demat statement submitted by the clients it is noticed that out of the 6,96,161 shares bought by M/s HP SPL, 6,95,000 shares were transferred into the demat account of M/s Vivenasri (a/c no. 10466221 maintained with HDFC Bank) on November 23, 2000.
- iii) Similarly, for the shares bought by M/s NFFSPL (1,25,000 shares) in this settlement, 1,24,000 shares were transferred to the demat account of M/s VFSL (a/c no. 10466221 maintained with HDFC Bank) on November 23, 2000.
- iv) Thus, the shares bought by the clients M/s HP SPL and M/s NFFSPL were consolidated into the account of M/s VFSL on November 23, 2000. Out of the shares consolidated, 5,00,000 shares were used to effect pay-in by M/s VFSL for its net sell obligation of 5,00,000 shares during settlement no. 48.
- v) Further, from the shares thus accumulated in M/s VFSL account, around 1,75,000 shares have been sold through HDFC bank's 'insta cash scheme' during settlement no. 48.

Settlement No. 2000047:

SETT No.	SETTLEMENT WISE CLIENT'S NET POSITION		
	VFSL	HPSPL	NFFSPL
2000047	-432500	201999	232500

- i) As seen from the table above, in settlement No. 47 (NSE), M/s VFSL had a net sell position of 4,32,500 shares whereas both M/s HPSPL and M/s NFFSPL had a net buy position of 2,01,999 shares and 2,32,500 shares respectively.
- ii) From the demat statement submitted by the clients it is noticed that the shares bought by M/s HPSPL (2,01,999 shares) in settlement no. 47 were transferred into the demat account of M/s Vivenasri (a/c no. 10466221 maintained with HDFC Bank) on November 30, 2000.
- iii) Similarly, for the shares bought by M/s NFFSPL (2,32,500 shares) in this settlement, 2,30,000 shares were transferred to the demat account of M/s VFSL (a/c no. 10466221 maintained with HDFC Bank) on November 29, 2000.
- iv) These shares cumulated in the account of M/s VFSL were sold during Settlement No.49 through HDFC bank's "Insta Cash scheme".

Settlement No. 2000048:

Broker	Client	Settlement No. 48 NSE		Broker wise net position
		bought	sold	
Ghalla Bhansali	VFSL	130000	130000	0
Integrated	VFSL	6000	506000	-500000
Shalibadra	VFSL	570940	0	570940
	HPSPL	0	163500	-163500
Namah Capital	VFSL	0	175000	-175000
Soni Secs Ltd	VFSL	260499	0	260499

- i) As per the table above, in settlement No. 48 (NSE), M/s VFSL had a net sell position of 5,00,000 shares with TM M/s Integrated, net sell position of 1,63,500 shares with TM M/s Shalibhadra, net sell position of 1,75,000 shares with TM M/s Namah Capital and a net purchase position of 2,60,499 shares with TM M/s Soni Securities. Whereas, M/s HPSPL had a net purchase position of 5,70,940 shares with TM Shalibhadra.
- ii) From the demat statement submitted by the clients it is noticed that for the shares bought by M/s HPSPL (5,70,940 shares) in settlement no. 48 the TM M/s Shalibhadra has received and credited the shares in the demat account of M/s HPSPL (a/c no. 12482988 maintained with HDFC Bank.) on December 06, 2000. On December 07, 2000, around 5,71,274 shares from the above account were transferred into the demat account of M/s Vivenasri (a/c no. 10466221 maintained with HDFC Bank).
- iii) Similarly, for the shares bought by M/s VFSL (2,60,499 shares) in this settlement, the TM M/s Soni Securities has received the shares on December 06, 2000 and credited the shares in the demat account of M/s VFSL (a/c no. 10466221 maintained with HDFC Bank) on December 11, 2000.
- iv) Thus these cumulated shares were used for the sale transactions of M/s VFSL in Settlement No. 50 through HDFC Bank's "insta cash scheme".

Settlement No. 2000049:

SETT No.	SETTLEMENT WISE CLIENT'S NET POSITION		
	VFSL	HPSPL	NFFSPL
2000049	-221496	165000	0

- i) As per the table above, in settlement No. 49 (NSE), M/s VFSL had a net sell position of 2,21,496 whereas M/s HPSPL had a net buy position of 1,65,000 shares.
- ii) From the demat statement submitted by the clients it is noticed that the shares bought by M/s HPSPL (1,65,000 shares) in settlement no. 49 were transferred to its account on December 13, 2000 and on the same day these shares were transferred into the demat account of M/s Vivenasri (a/c no. 10466221 maintained with HDFC Bank).
- iii) Thus these cumulated shares were used for the sale transactions of M/s VFSL in Settlement No. 51.

As brought out above, while the sales were made predominantly by one of the related clients – M/s VFSL – the corresponding purchases were made by the other two related clients – M/s HPSPL and M/s NFFSPL. The shares received by way of purchases by the two related clients were aggregated and transferred to the demat account of the selling client, who in turn effected further sales. In this way with limited amount of shares, the related clients were able to generate huge volumes in the scrip of M/s EKL. This pattern of trading was observed in other settlements also.

8. Trading pattern of the clients at BSE: The clients VFSL, HPSPL and NFFSPL have also traded at BSE during the period under investigation. By way of illustration, the settlement wise net position of the three related clients is as under:

Sett. No.	SETTLEMENT WISE CLIENTS NET POSITION		
	HPSPL	NFFSPL	VFSL
20		106000	-56000
21		225000	-125000
23		9900	-95678

24		30000	-20600
25		80000	
33		-80000	28808
34			-1000
35			1200
36			86500
37			82000
38			0
39			-109900
40			0
41			-10000
42			2600
43			-20000
44			163700
45			15700
46	100000		108000
47	49800		-49300
48	77910		115087
49	-7897	-3500	-14500
50	-180473		-50000
51	-59688		-40587
52			-17600

Demat Statement Analysis: The analysis of the demat statements (settlement wise) of the clients reveals the following:

Settlement No. 37:

For instance, during settlement no. 37, M/s VFSL had a net purchase position of 1,45,000 shares through M/s Ruchiraj Shares and Stock Brokers. 1,33,000 shares out of the 1,45,000 shares received by M/s VFSL on 16.12.2000 were transferred to its other demat account (a/c no. 14476549 maintained with SHCIL) on 18.12.2000. On the same day, i.e. 18.12.2000, M/s VFSL sold 1,33,000 shares through the "Sell and Cash scheme" of SHCIL.

Settlement No. 38:

During settlement no. 38, M/s VFSL had a net purchase position of 1,15,000 shares through M/s Ruchiraj and M/s JGA Shah. A total of 73,200 shares out of the 1,15,000 shares received by M/s VFSL on 26.12.2000 were transferred into its other demat account (a/c no. 14476549 maintained with SHCIL) on 27.12.2000. On the same day, i.e. 27.12.2000, M/s VFSL sold these shares through the “Sell and Cash scheme” of SHCIL.

Settlement No. 40:

During settlement no. 40, M/s VFSL had a purchase position of 2,73,200 shares through the TMs - M/s Kantilal Chaganlal (sub-broker M/s Sanghavi Investments 1,73,200 shares) and M/s JGA Shah (sub-broker Yash Stock Broker 1,00,000 shares). A total of 1,73,200 shares received by M/s Sanghavi Investments into their demat account has been transferred into the demat account of M/s VFSL maintained with SHCIL on 13.01.2001. These shares have been used for pay-in arising out of sales done by M/s VFSL during settlement no. 43 through SHCIL’s “Sell and Cash scheme”.

Out of the 1,00,000 shares bought by M/s VFSL through M/s Yash Stock Broker, 73,200 shares were transferred in the demat account of M/s VFSL on 08.01.2001. These shares have been sold by M/s VFSL during settlement No. 42 through SHCIL’s “ Sell and Cash scheme”.

Settlement No. 43:

During settlement no. 43, M/s VFSL had a purchase position of 1,50,000 shares through the TMs - M/s JGA Shah (sub-broker Yash Stock Broker). These shares were received in the demat account of M/s VFSL maintained with SHCIL on 30.01.2001. Further, M/s VFSL had purchase position of 50,000 shares through the TM – M/s Bharathi Thakkar. These shares were also received in the demat account of M/s VFSL maintained with SHCIL on 30.01.2001. These shares (1,50,000 + 50,000) totaling of 2,00,000 shares have been given for meeting the pay-in arising for Settlement No. 2001005 at NSE for the sales done through

SHCIL's "Sell and Cash scheme". The same pattern of trading was observed for the three related clients running across various settlements.

9. Summary of the statements of the clients: The representatives of VFSL, HPSPL and NFFSPL stated that –

- 1 The three entities – VFSL, HPSPL and NFFSPL - are associate / group companies.
- 2 With regard to the source of shares with which they had traded so extensively, they agreed that they had purchased bulk shares of M/s EKL from M/s Ankur Finlease Pvt. Ltd. – Delhi which they in turn offloaded in the market. The relevant details of their statement under oath is reproduced below:
 - M/s.EKL came out with a rights issue during January 2000. We purchased cum-rights shares (approx. 6 lacs shares) from M/s.Ankur Finlease Pvt. Ltd., New Delhi and approx. 1.5 lac shares from the market. The 6 lacs shares purchased from M/s. Ankur were in the name of M/s. A.H. Holdings Pvt. Ltd.. We got the shares transferred in our name and then made application for rights (rights was in the ratio 1:1). Therefore, after rights, we had approx. 15 lac shares of M/s.EKL.
 - Part of the source of funds for applying for the rights (Rs. 25 lacs out of the total amount of rights application of approx. Rs.75 lacs) came from M/s Shalibhadra Securities Limited – a broker of NSE. The same has been returned to M/s Shalibhadra Securities on 17.02.2000.
- 3 With regard to the trading of shares in the market resulting in churning of shares, the clients agreed that they had traded among themselves through various brokers – both at NSE and BSE – during the

investigation period. The relevant portion of their statement under oath in this regard is reproduced below:

- During January to March 2000; August to September 2000; and November 2000 to March 2001, we executed trades in the scrip of M/s.EKL.
 - All the three companies at various points of time were trading and were acting either as purchasers or sellers.
 - During the investigation periods, the trades were executed through brokers of BSE and NSE.
 - The shares received by way of purchases made by M/s.HPSPL and M/s.NFFSPL were transferred to M/s.VFSL which were used to meet the settlement obligations of M/s.VFSL.
 - This happened in most of the settlements during the periods 2 and 3 at both BSE and NSE.
 - Both at BSE and NSE, one of our companies (mainly M/s.VFSL) was selling the shares of M/s.EKL and at the same time, the other companies (mainly M/s.HPSPL) were purchasing.
 - For eg: at NSE in Settlement No. 46, M/s VFSL had a net sell position of 6,41,900 shares whereas both M/s HPSPL and M/s NFFSPL had a net buy position of 6,96,161 shares and 1,25,000 shares respectively. The shares bought by M/s HPSPL and M/s NFFSPL received (into the demat account), were transferred into the demat account of M/s VFSL which was used to meet the net obligation of M/s VFSL. This was done in other settlements also both at BSE and NSE as mentioned above.
 - During August to September 2000 and November 2000 to March 2001, part of the sales were done through SHCIL and HDFC Bank, for which the purchases were made by us through different brokers.
- 4 With regard to the matched trades done by the clients through various brokers, they agreed under oath that they had executed such

transactions at both BSE and NSE. The relevant portion of their statement is brought out below:

- In Phase I, M/s VFSL has only traded and the trades were in the nature of squaring off.
- During Phase II and III, our group companies – M/s VFSL, M/s HPSP and M/s NFFSP – were trading and acting as buyer and seller at the same time at both BSE and NSE.

10. Based on the above, the investigations have alleged that the related clients have-

- i) Directly / indirectly entered into transactions in securities with the intention of artificially manipulating the market, thus violating the provisions of Regulation 4(a) of SEBI (FUTP) Regulations, 1995.
- ii) Indulged in acts calculated to create a false or misleading appearance of trading in the market in the scrip of M/s EKL, thus contravening the provisions of regulation 4(b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995.
- iii) Indulged in acts resulting in reflection of the share price of the scrip of M/s EKL, based on transactions that are not genuine trade transaction, thus contravening the provisions of regulation 4(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 and ;
- iv) Entered into purchase or sale of the shares of M/s EKL, not intended to effect transfer of beneficial ownership but intended to operate only as a device to cause fluctuations in the market price of the scrip, thus contravening the provisions of regulation 4(d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995.

11. In view of the above allegations, it was proposed to issue show cause notices to the clients named above. Show Cause Notices, all dated 24-04-2003 were issued to the three entities mentioning the charge against them in terms of Section 11 (4) of the SEBI Act, 1992. The notice required them to show cause as to why in the interest of investors and for the orderly development of securities market, appropriate direction(s) as provided under section 11(4) of the SEBI Act, 1992 including orders restraining them from accessing the securities market and prohibiting them to buy, sell or deal in securities for a period of 5 years should not be passed against them for the alleged violations. The entities were required to send their reply within 15 days from the receipt of the notice.

12. NFSPL and HPSPL replied through their authorized representative, Shri Rajeev Kumar by their reply dated 16-02-2004 and VFSPL also replied through Shri Rajeev Kumar by their reply dated 03-03-2004 putting forth their submissions.

13. A notice dated 22-07-2004 for hearing was issued to the entities intimating the entities to appear for a personal hearing on 13-08-2004. The hearing was postponed to 06-09-2004 which was subsequently postponed to 14-09-2004. Shri Rajeev Kumar, authorised representative of the said 3 entities had on 06-09-2004 had forwarded the written submissions on behalf of his clients. On 14-09-2004, Shri Rajeev Kumar, the authorized representative for the entities had appeared before the erstwhile Whole Time Member, SEBI. Due to the Member resigning from office, the orders could not be passed on time and when the cases were referred to me, I thought it fit to hear the parties before passing any orders against them. In view of this, a notice for hearing dated 07-04-2006 was sent to the entities advising them to attend a hearing before me on 02-05-2006. There was no appearance on 02-05-2006 and hence another notice dated 09-05-2006 was sent requiring them to be present on 24-05-2006. I note that the entities have not appeared before on the said date. Since the entities have not

appeared before me inspite of repeated opportunities, I am of the view that further opportunity need not be afforded to them and the case can be proceeded ex-parte.

14. I have perused the Show Cause Notices, the reply submitted by the entities and their written submissions. I also note that the three entities are associates and have one director, who is common in all. Since the charges against the entities are the same, I proceed to consider the issues and pass a common order for all of them. The issues that come for consideration in this case are:

- a) Whether the entities have traded among themselves in a manner so as to attract the provisions of Regulation 4 (a), (b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995?
- b) Whether direction in the nature of restraining them from accessing the securities market is warranted in this case?

15. I note that the investigations have revealed that the entities after building up their reserves of the shares of EKL have started to trade in the market through various brokers. This is seen from the trade data from the concerned stock exchanges furnished to SEBI.

16. From the investigation report, I note that the entities have traded through various brokers in the scrip of EKL. I also note that the said entities have used the facility of "SELL AND CASH" Scheme provided by certain custodians like M/s. Stock Holding Corporation of India Limited and M/s. HDFC Bank Limited. The entities have also maintained depository accounts with the custodians. The investigation also reveals that from the money received from the custodians for the sales for one settlement, the same was used to meet the pay-in obligations arising out of their net purchases made during the previous settlement. A very

vital aspect in those trades was that they had sold and purchased among themselves. It was also discovered that the shares were sold by one of the clients and the purchases were made by either of the other two entities and the shares received by the purchasers were aggregated and then transferred to the dematerialized account of the seller who in turn had effected further sales. Thus when VFSL sold the shares of EKL, either HPSPL or NFSPL were the purchasers and the shares so bought were routed to the dematerialized account of VFSL. By this way the entities with limited shares and capital were able to generate volumes in the scrip of EKL.

17. As stated above, the entities were trading among themselves, which is evident from the trading pattern. From an analysis of the settlement in the dematerialized account of the three entities I note the following:

- a) In Settlement No.46 (for trades done at NSE), VFSL had a net sell position of 6,41,900 shares and HPSPL and NFSPL had a net buy position of 6,96,161 and 1,25,000 shares respectively out of 6,96,161 shares bought by HPSPL. HPSPL had transferred 6,95,000 shares to the dematerialized account of VFSL and NFSPL had transferred 1,24,000 shares to the account of VFSL. These shares were routed to the account of VFSL which had been used for settling subsequent trades.
- b) In Settlement No.47, VFSL has a net sell position of 4,32,500 shares and HPSPL and NFSPL had net buy position of 2,01,999 and 2,32,500 shares respectively. The Demat statement of VFSL shows that 2,01,999 and 2,30,000 shares had been transferred by HPSPL and NFSPL respectively. These shares so accumulated were sold during Settlement No. 49.

- c) In Settlement No.48, HPSPL had purchased 5,70,940 shares through M/s. Shablidhadra Securities (member of NSE) which were credited in the dematerialized account of HPSPL which were in turn transferred to the account of VFSPL.
- d) In Settlement No. 49, HPSPL had purchased 1, 65, 000 shares which were in turn transferred to the account of VFSPL. The shares so accumulated were used by VFSPL for Settlement No.51.

18. Thus from the above data I find that the entities were trading among themselves. The sales were made predominantly by one of the related clients, VFSPL and the corresponding purchases were made by the other two clients viz. HPSPL and NFSPL. The shares received from one entity was used to settle trades of subsequent sales, which has given a false picture in the market that there was some movement in the volumes and price of the scrip of EKL. This kind of a trading pattern was seen also in Bombay Stock Exchange. The entities had admitted that part of funds for purchasing shares came from M/s. Shlibhadra Securities which had been returned later on 17-02-2000. The entities have also admitted that they have traded through various members of NSE and BSE and that they had traded among themselves. It is also admitted that VFSPL had sold the shares of EKL and the other two entities were the purchasers. I also note that they had admitted that they had entered into matched transactions during Phases I and II of the investigation.

19. The entities have replied on similar lines and also their written submissions were identical and all were also represented by a common representative. Their preliminary objection was that since Section 11(4) of the SEBI Act, 1992 was inserted in 2002 and that the alleged violations were committed during 2000-2001, the said provision can have no applicability as the same was not given retrospective effect. I am of the considered view that SEBI has been empowered to protect the interests of investors in securities and to

promote the development of, and to regulate the securities market, by such measures as it thinks fit under Section 11(1) of the SEBI Act. Even Section 11B of the SEBI Act (inserted in the Act during 1999) empowers SEBI to issue directions in appropriate cases. The said provisions are reproduced below for convenience:

“Functions of the Board 11. (1) *Subject to the provisions of this Act, it shall be duty of the Board to protect the interests of the investors in securities and to promote and development of, and to regulate the securities market by such measures as it thinks fit.*

Power to issue directions 11B. *Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,-*

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,-

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A as may be appropriate in the interests of investors in securities and the securities market.”.

I further note that the powers under section 11(4) of the SEBI Act, 1992 are but an elucidation of the powers already enjoyed by SEBI under section 11 and 11B of the Act. Sections 11(1) and 11B of the SEBI Act empower SEBI to issue directions to any person operating in the securities market in case of contingency. Section 11 of SEBI Act was in place from 1992 and Section 11 B was inserted in the Act during 1999. Thus the

power to issue directions was already in force during the period when the said violations were committed by the entities.

20. The entities have also taken the defence that the principles of 'natural justice' were not followed in conducting the enquiry since they have not been given the opportunity to cross examine the investigation team of SEBI and of NSE. I find that there is no need for any cross examination since the relevant portions of the Investigation Report was furnished to the entities. Moreover the statements of the entities would itself substantiate that the entities had indulged in trades among themselves. When all documentary evidence was furnished to the entities to show cause all the cardinal principles of natural justice have been followed. The statement of the entities that the principles of natural justice were not followed is not justified in law.

21. The other defence raised by the entities in their written submissions is that they were doing 'day trading' or 'jobbing'. Day traders do trades for that particular day. But the entities have done trading in a way which is circular in nature. Thus, this defence also goes out of way. Such trades are definitely not in the usual course as done by a jobber. Thus from the aforesaid, it can be seen that the entities have in fact traded in a way so as to attract the provisions of Regulation 4 (a), (b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. In the result, I find that the entities have traded in an unfair manner not in a manner benefiting the securities market and thus suitable directions needs to be issued against them.

22. I, therefore in exercise of powers conferred under Section 19 of SEBI Act, 1992 and Sections 11 and 11B of the SEBI Act, 1992, do hereby direct M/s. Vivensari Financial Services Private Limited, M/s. Harsha Pranav Securities Private Limited and M/s. Newfin Financial Services Private Limited all having address at 419, Kubera Towers, Narayanguda, Hyderabad – 500029, are restrained from accessing the securities market and prohibited from buying,

selling or otherwise dealing in securities in any manner and in any capacity for a period of six months.

23. This order shall come into force with immediate effect.

DATE: 20.08.2008

PLACE: MUMBAI

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