

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

**IN THE MATTER OF M/s. ADMIRAL SECURITIES, SUB-BROKER (SEBI
REGISTRATION NO. INS011751315) AFFILIATED WITH VSE SECURITIES
LTD. AND MEMBER, VADODARA STOCK EXCHANGE (SEBI
REGISTRATION NO. INB191029819)**

IN THE SCRIP OF M/s. DESIGN AUTO SYSTEMS LTD.

Date of hearing: 30-07-2007

Appearances:

For M/s. Admiral Securities:

Ms. Sonal Parikh, Authorised Representative

For the Securities and Exchange Board of India:

- 1. Shri P. K. Bindlish, Chief General Manager*
- 2. Shri Pradip Bhowmick, Manager*
- 3. Ms. Kshama Chavan, Legal Officer*

ORDER

**UNDER REGULATION 28 (2) OF THE SECURITIES AND EXCHANGE BOARD
OF INDIA (INTERMEDIARIES) REGULATIONS, 2008**

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI' or 'the Board') conducted investigations into the dealings in the shares of M/s. Design Auto Systems Ltd. ('DASL' or 'the company') for the period between November 2001 and January 2002 pursuant to a preferential allotment made by the said company to another company called Bonanza Biotech Ltd. (BBL) in the

swap ratio of 1:1. The Shares of DASL were listed on the Bombay Stock Exchange Ltd. (BSE), Madhya Pradesh Stock Exchange (MPSE) and Ahmedabad Stock Exchange (ASE). The shares of BBL were listed on the BSE and MPSE. The broad course of events in the case are as under:

- a) DASL made a preferential allotment of 10 crore of its shares (said shares) to BBL on October 29, 2001 which was about 14 times of the paid up capital of DASL before the allotment. The consideration was another preferential allotment of 10 crore shares made by BBL to DASL on the same date which was about 5 times of the paid up capital of BBL before the allotment. There was no exchange of cash.
- b) DASL made application for listing of the said shares allotted to BBL to MPSE and later to BSE. The MPSE granted listing permission with undue haste and without exercising due diligence, but did not grant trading permission. The BSE kept the listing application pending, as it apprehended that DASL would have committed certain irregularities in the process. No application for listing was made to ASE.
- c) Eventually, the listing application of DASL was rejected by BSE. However, on the basis of listing permission given by MPSE, the Central Depositories Services Ltd. (CDSL), a registered depository, dematerialized these shares and credited them to the beneficial owner account of BBL.
- d) BBL offloaded substantial portion of these unlisted shares on the trading platform of BSE through a network of entities, including one Coverage & Consultants Ltd. ('CCL' or 'the client'). Though this was not permissible in terms of BSE Bye-laws and constituted bad delivery thereunder, the BSE Clearing House or any other parties to the trades could not immediately detect the irregularity as these shares were in the

dematerialized form and were fungible with the already existing validly listed shares of DASL. As a result, a number of innocent investors who purchased those shares were defrauded and saddled with unlisted shares which could not be legally transacted on the BSE.

- e) When this came to the notice of SEBI and BSE, many transactions were reversed and the demat account of BBL was frozen after recovering a portion of the shares that were offloaded by it.
- f) BSE suspended trading in the shares of the company on and from 14-01-2002. 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 Bombay High Court by an order passed on 28-02-2003 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 were already created. Vide the said order 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 adversely.
- g) Subsequently, investigations were initiated by SEBI to probe into the alleged and apparent malpractices committed by DASL, BBL and other entities.

2. 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. CCL 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, CCL 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.
3. From the findings of the Investigations, it was inter alia found that M/s. Admiral Securities, sub-broker affiliated with VSE Securities Ltd. and member of Vadodara Stock Exchange,[hereinafter referred to as 'the noticee'] was also instrumental in offloading the unlisted DASL shares on the BSE trading platform on behalf of its client, CCL. It was alleged that the noticee had accepted unlisted shares of DASL through off-market transfers based on the directions of CCL. It was also alleged that the noticee 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 which was further established from the fact that the noticee had made huge advance payment to CCL. It was further alleged that the noticee did not exercise due diligence, as is expected from a sub-broker under the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations').
 4. In view of the same, the noticee was alleged to have contravened the provisions of Clauses A (1) & (2) and D (4) & (5) of the Code of Conduct prescribed for sub-brokers in Schedule II of the Broker Regulations read with Regulation 15 of the same Regulations. Accordingly, an Enquiry Officer was appointed to conduct enquiry against the noticee in terms of the provisions of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations') [since repealed by the SEBI (Intermediaries) Regulation, 2008].
 5. After completing the enquiry in terms of the Enquiry Regulations, the Enquiry Officer found that the noticee had failed to exercise due care and diligence while dealing with its client who was involved in introducing unlisted shares of DASL into the market. On arriving at the above findings, the Enquiry Officer vide her

Enquiry Report dated 21-10-2005 had recommended that the certificate of registration granted to the noticee be suspended for one working day.

6. As the Board was not in agreement with the penalty recommended by the Enquiry Officer, a show cause notice dated 30-11-2006 in terms of Regulation 13 (2) and 13 (5) of the Enquiry Regulations was issued requiring the noticee to show cause as to why a penalty higher than what was recommended by the Enquiry Officer should not be imposed on it. Since no reply came from the noticee, a reminder dated 07-03-2007 was sent to the noticee requiring it to submit its reply latest by 15-03-2007. The notice vide letter dated 10-03-2007 replied to the said show cause notice, wherein it made its submissions (being dealt with in the later part of this order). The noticee submitted that personal hearing was not desired and requested that its replies dated 01-08-2005 and 26-08-2005 be considered while deciding the matter. Since it was proposed to enhance the penalty recommended by the Enquiry Officer, a personal hearing was granted to the noticee on 30-07-2007. During the course of hearing, the noticee expressed its willingness to apply for a 'consent order' in accordance with the guidelines prescribed in that regard vide SEBI Circular EFD/ED/CIRCULAR 1/2007 dated 20-04-2007, and so the matter was kept in abeyance. Now, since the noticee has not filed any application for a 'consent order' and not wanting to keep the case pending un-necessarily, I proceed to decide the case based on the materials on record.
7. The issue to be determined would be whether the noticee had taken due care and diligence while dealing with its client (CCL), who was one of the entities responsible for introducing unlisted shares of the company in the market. Before going into the issues involved in the matter, I would like to mention few of the important developments in the matter starting from the time when the matter was investigated by the Board till orders were passed against the entities that were responsible for the irregularities and thereafter.

8. The company made a preferential allotment of 10 crore shares on 29-10-2001 to BBL on swap basis. During the course of the investigations undertaken by the Board, it was found that the allottee (BBL) had transferred a part of the said shares to various entities and subsequently the same shares were traded on the BSE even before they were listed. When this fact came to light, BSE intervened and suspended the trading in the scrip with effect from 11-01-.2002. Because of the intervention and timely action by the BSE, 9,01,78,926 shares out of the 10,00,00,000 unlisted shares were frozen. By that time the remaining 98,21,074 shares were already sold to unsuspecting investors in the market. The Board, then initiated proceedings against DASL, BBL, CCL and other entities connected in the matter. After completing the proceedings, the Board vide its order dated March 6, 2007, under Sections 11 and 11B of the SEBI Act, 1992, restrained, among others, DASL and its Directors, namely, Shri Sarvesh Garg, Smt. Rita Garg, Shri Prashant Rajgarhia and Shri Rajendra Tare from accessing the capital market for a period of 7 years from the date of the order and they were also restrained from buying, selling or dealing in securities in any manner directly or indirectly during the said period.
9. DASL and its directors being aggrieved by the said order dated March 06, 2007, challenged the same by way of an appeal in Appeal No. 62 of 2007 before the Hon'ble Securities Appellate Tribunal (SAT). During the pendency of the said appeal, DASL and its directors filed an application before the SEBI for obtaining a consent order in terms of the circular dated April 20, 2007. The application for consent order was processed and the matter was placed for the consideration of the High Powered Advisory Committee (HPAC) set up by the SEBI to deal with consent matters. The said committee considered the terms of consent offered by DASL and its Directors and after deliberations approved the revised terms of consent as offered by the applicants. In the revised consent terms, amongst others, DASL had proposed to pay Rs.10 lakhs as the consolidated consent amount and Rs.1.75 lakhs towards legal expenses. The revised terms were then approved by the panel of two Whole Time Members of the Board. Pursuant to the approval of

the revised terms, DASL and its directors had moved an application before the Tribunal in terms of the aforesaid circular, with a prayer that the appeal be disposed of as per the terms of consent offered by them and approved by the SEBI. I note that vide order dated 30-07-2008, the Hon'ble Tribunal disposed of the said appeal based on the revised terms of consent offered by DASL and its directors, though clauses 4 & 5 of the 'revised consent terms' were modified by the Hon'ble Tribunal enabling the directors of DASL to procure within six months, commencing from August 1, 2008 from the market (including BBL) 98,21,074 shares of DASL and make those available with DASL to enable it to take steps for cancelling the same in accordance with law and that they shall not deal with those shares in any manner except for the purpose of complying with the consent terms.

10. SEBI had passed an order dated March 06, 2007, whereby BBL and its directors were inter alia restrained from buying, selling or dealing in securities in any manner directly or indirectly for a period of 7 years. BBL and its directors then challenged the said order before the Hon'ble Tribunal in Appeals Nos. 110 and 138 of 2007. While upholding the impugned order and dismissing the appeals, the Hon'ble Tribunal observed that it was inconceivable that BBL was unaware that the ten crore shares of DASL allotted to them were not listed. The Tribunal while agreeing with the findings of SEBI recorded in the impugned order, also observed that the impugned order had pointed out the nexus between DASL and BBL and their directors in issuing preferential shares on swap basis and the manner in which these were offloaded in the market entrapping the lay investors.
11. I note that BBL had traded in the shares of the DASL through many related entities. One such entity was CCL, which had sold the shares through the noticee. I note that vide order dated 22-10-2007 passed by the Board against CCL, it has found that CCL and its directors had played an important role in offloading of the unlisted shares of DASL on the BSE and hence were part of the fraudulent design to cheat the innocent investors. The Order found them of having violated

Regulations 3 and 4 of the PFUTP Regulations, 1995. In view of the violations, under sections 11 and 11B of the SEBI Act, 1992, they were restrained from accessing the securities market and also prohibited from buying, selling or dealing in securities either directly or indirectly for a period of 7 years.

12. It thus becomes amply clear that DASL, BBL, CCL and other related entities had played fraud on the investors by off-loading unlisted shares (around 98 lakh shares) in the market thereby entrapping them. The issue of 'introducing unlisted shares of DASL in the market' is abundantly proved in the matter. It would be necessary to ascertain as to whether the noticee acted with due care and diligence while transacting in the shares of DASL for its client, CCL.
13. I note that of the 10 crore shares (unlisted in BSE) allotted to BBL by DASL, 6 crore shares were transferred from the account of BBL to different entities as can be seen below:

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 Parwane	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

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

	Date	CMBP ID	Quantity (No. of shares)
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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

Shares to the tune of one crore were transferred to CCL by BBL. CCL was dealing through the Equisearch Broking Pvt. Ltd., Pinnacle Finstock Pvt. Ltd., Shri Parshwa Finance and Admiral Securities (the noticee). The noticee had admitted that they had received 10 lakh shares of DASL from CCL on 12-12-2001 as advance pay-in with a direction that the shares be sold in the secondary market in the price range between Rs.5 and Rs.6. In the statement to SEBI on 11-06-2003, the authorized representative of the noticee stated that they had sold the shares on 12-12-2001 and 13-12-2001 and after selling 4, 95,000 shares in a single settlement, the noticee felt a mismatch and stopped dealing in the scrip of DASL on behalf of CCL. It was further submitted that they had paid money in advance to their client to the tune of Rs.25 lakhs on 18-12-2001 out of Rs.27,33,792/- actually payable to CCL, whereas the pay-out was received from the exchange only on 24-12-2001. It was stated that the remaining 5,05,000 shares which were not sold, were kept with them for a month as a precautionary measure and then returned to CCL on 16.01.2002. In this regard, I find that the submissions made by the noticee are contrary in nature. While, on one hand the noticee had stated that they stopped trading on behalf of CCL post 13-12-2001 because of some mismatch, it had made the advance pay-out of Rs.25 lakh on 18-12-2001 before the pay out was made. It only shows that the noticee was hands in glove with CCL in offloading the unlisted shares in the market.

14. I also note that the noticee had transferred the shares back to CCL on 16-01-2002 after the BSE had imposed trading ban on the shares of DASL on 11-01-2002. Further, I find that the noticee had not reported that it had traded in the shares of

DASL during the period under scrutiny to the exchange. If the noticee had intimated the exchange before transferring back the balance unsold shares, I could have agreed with the claim of 'fair play' by the noticee. However, no such attempt was made by the noticee. Further, I note that the BSE had imposed a fine Rs.1 lakh on VSE Securities Ltd. (Broker with whom the noticee is affiliated) for trading in the shares of DASL. The said fine has been recovered from the noticee by VSE Securities. The Enquiry Officer has observed that no appeal has been filed either by VSE Securities or by the noticee against the decision of the BSE imposing fine. Though the noticee in its submissions has stated that it was constrained to take legal action against VSE Securities and BSE, the details of the said legal proceedings have not been divulged by the noticee.

15. The noticee had submitted that no evidence as to its knowledge of the relationship of the client with others has been furnished. In this connection, I am of the view that presumption plays a critical role in coming to a finding as to the involvement or otherwise of a party in any market misconduct. As observed by the Hon'ble SAT in the matter of Ketan Parekh¹ -

“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. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.”

¹ In Appeal No. 2 of 2004, decided on 14/07/2006

BBL and CCL along with other entities had offloaded the unlisted shares on the trading floor of BSE, impliedly representing that these were listed shares which could be validly delivered in the BSE as per its bye-laws. The clearing house of BSE and various counter parties to the transactions, being innocent investors, were unsuspecting and took delivery of such shares aggregating in number to 98,21,074, out of which 33,33,669 shares were introduced by CCL itself, out of which the noticee itself had sold 4,95,000 shares on behalf of CCL. Showing foolproof evidence in such cases would not be possible in all cases as the intention of the parties concerned would be within their special knowledge. Also any suggestion attributing innocence to the parties involved in such transactions would give rise to an untenable situation where only one set of entities (in the instant case DASL, BBL and CCL) would be responsible for the misconduct and none else. The involvement of others has to be inferred from the attendant circumstances of the case, more so, when there is a strong demonstration of uncommonness in the manner of execution of the transactions as already detailed above.

16. I am convinced that the conduct of the noticee in making advance payment to its client even before the pay out was made by the exchange, the act of transferring the remaining shares to CCL and non-reporting of the transfer of remaining DASL shares back to CCL after the trading in the scrip was suspended strongly suggest that the noticee is a party to the bigger design and the conspiracy hatched to defraud the investors by off-loading the unlisted shares.
17. In view of the above, I find that the noticee had not exercised due care and diligence as required from a prudent sub-broker/broker. The noticee had failed to maintain high standards of integrity and fairness in the conduct of its business. It had also acted in hand with its client whereby unlisted shares were offloaded in the market, thereby interfering with the smooth and fair functioning of the securities market. I, thus, hold the noticee of having violated the provisions of sub-clauses (1) and (2) of Clause A and sub-clauses (4) and (5) of Clause D as

mentioned in Schedule II of the Brokers Regulations read with Regulation 15 of the same Regulations. In view of the above reasons, I am of the considered view that a penalty of suspension of 7 days would be equitable in the matter.

18. Further, I note that the present proceeding against the noticee was conducted in accordance with the provisions of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing Penalty) Regulations, 2002. Subsequently, the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as 'Intermediaries Regulations') came into existence of which Chapters V and VI have been notified during May, 2008. I find that Regulation 38 (1) of the Intermediaries Regulations had repealed the SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing Penalty) Regulations, 2002. Further, Regulation 38 (2) of the Intermediaries Regulations has saved actions taken under the Enquiry Regulations. As, the Enquiry Regulations have been repealed and actions taken under its provisions have been saved by the Intermediaries Regulations, this order is issued under the relevant provisions of the Intermediaries Regulations.
19. Therefore, in terms of powers conferred upon me under Section 19 of the SEBI Act, 1992 and Regulation 28 (2) of the SEBI (Intermediaries) Regulations, 2008, I hereby direct that the certificates of registration granted by the SEBI to M/s. Admiral Securities, sub-broker (SEBI Registration No. INS011751315) affiliated with VSE Securities Ltd. and member of Vadodara Stock Exchange (SEBI Registration No. INB191029819) are suspended for a period of 7 days.
20. This order shall come into force after expiry of 21 days from the date of this order.

DATE: 12.12.2008

PLACE: MUMBAI

Dr. T.C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA