

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K.M. ABRAHAM, WHOLE TIME MEMBER.

DIRECTIONS UNDER SECTIONS 11 B OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AND REGULATIONS 44 AND 45 OF SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS REGULATIONS) 1997 AGAINST

- 1. LUXURY FOAMS LIMITED,**
- 2. ECHO CHEMICALS PRIVATE LIMITED,**
- 3. TMS BOARDS & INDUSTRIES PRIVATE LIMITED,**
- 4. COOKFAST FOODS PRIVATE LIMITED,**
- 5. ECONO COMMERCIAL EVALUATORS PRIVATE LIMITED,**
- 6. AJAY ROADWAYS PRIVATE LIMITED,**
- 7. CASTLE BUILDERS PRIVATE LIMITED,**
- 8. DILLI SOAPS & CHEMICALS PRIVATE LIMITED,**
- 9. RAI COMMERCIAL PRIVATE LIMITED,**
- 10. CMC MARKETING PRIVATE LIMITED,**
- 11. WEBSITE INFOSYS LIMITED AND ITS DIRECTORS NAMELY,
MR. S.L. MALOO, MR. R.K. AGARWAL, MR. M. C. MALOO, MR.
S. C. SETHIA, MR. K. K. AGARWAL, MR. SUNIL AGARWAL,
MR. D.D. MANGER AND MR. ASHUTOSH SHARMA,**
- 12. LUNAR FINANCE LIMITED AND ITS DIRECTORS NAMELY MR.
S. L. MALOO AND MR. SUNIL AGARWAL,**
- 13. YARE ENGINEERING PRIVATE LIMITED AND ITS DIRECTORS
NAMELY, MR. DIGAMBAR MANDAL, MR M. C. CHHAJER AND**

- MR. SUNIL AGARWAL,
14. YASHODANANDAN INVESTMENT PRIVATE LIMITED,
 15. CHAKRADHARA HOLDINGS PRIVATE LIMITED,
 16. DEVKINANDAN HOLDINGS PRIVATE LIMITED,
 17. MURLIWALA HOLDINGS PRIVATE LIMITED AND THEIR (SL NO. 14 TO 17) DIRECTORS NAMELY, MR. SUNIL AGARWAL AND MR. JASWANT SAINI,
 18. SUNRAJ SOFTWARE PRIVATE LIMITED,
 19. TEKNIK DIGITAL SYSTEMS PRIVATE LIMITED,
 20. EMERALD HOUSING & CONSTRUCTIONS PRIVATE LIMITED
 21. ECHO CHEMICALS PRIVATE LIMITED AND ITS DIRECTORS NAMELY, MR S.C. SETHIA, MR. M. C. CHHAJER AND MR. SUNIL AGARWAL,
 22. M/S. JAI SHANKAR INVESTMENT PRIVATE LIMITED AND ITS DIRECTOR MR. M.M. MIGLANI
 23. MR. RAJIV SHARMA, CHARTERED ACCOUNTANT, PARTNER OF M/S RAJIV PRAKASH & COMPANY, AUDITOR OF WEBSITE INFOSYS LIMITED

Date of Hearing: October 16, 2008

Appearance:

For noticees : Mr S. L. Maloo on behalf of Websity Infosys Limited and its directors.

Mr. M. M. Miglani on behalf of M/s Jai Shankar Investment Private Limited and himself.

Mr. Rajiv Sharma in person

For Securities and Exchange Board of India:

Mr. Amarjeet Singh, General Manager

Mr. Achal Singh, Assistant General Manager

Mr. Vijayakrishnan. G, Assistant Legal Advisor

1. The facts and circumstances leading to the present proceedings are summarised below. The shares of Websity Infosys Limited are *inter alia* listed on

Bombay Stock Exchange Limited (BSE), Delhi Stock Exchange Association Limited (DSE), Ahmedabad Stock Exchange Limited (ASE) and Jaipur Stock Exchange Limited (JSE). Websity Infosys Limited was originally incorporated as Delicate Leasing and Finance & Investment Company Limited on March 13, 1984. Its name was subsequently changed to Sunrise Securities Limited and it obtained a fresh certificate of incorporation on July 15, 1993. Pursuant to the said name change, Sunrise Securities Limited came out with a public issue and a rights issue. Thereafter, its name was changed to Websity Infosys Limited (hereinafter referred to as the company), vide resolution passed in Extraordinary General Meeting held on July 6, 1998. It was brought to the notice of Securities and Exchange Board of India (hereinafter referred to as SEBI), that, the Board of Directors of the company in their meeting held on October 5, 1999 made a preferential allotment of 41,81,700 fully paid up equity shares of Rs. 10/- each and 4,40,00,000 partly paid equity shares at the rate of Re.1/- each, for consideration other than cash, to the entities belonging to the promoter group of the company, namely, Luxury Foams Limited, Echo Chemicals Private Limited, Yare Engineering Private Limited, TMS Boards & Industries Private Limited, Cookfast Foods Private Limited, Econo Commercial Evaluators Private Limited, Ajay Roadways Private Limited, Castle Builders Private Limited, Dilli Soaps & Chemicals Private Limited, Rai Commercial Private Limited, CMC Marketing Private Limited. This preferential allotment resulted in the increase of shareholding of the promoter group (including the aforesaid allottees) from 32.99% to 70.20% of the total equity capital of the company, which triggered the provisions of Regulation 11(1) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations). The allottees of the aforesaid preferential allotment are hereinafter collectively referred to as the acquirers. Admittedly, the acquirers had not made a public announcement in respect of their acquisition. In view of the above, SEBI conducted an investigation into the affairs relating to the alleged violation of the provisions of the Takeover Regulations in respect of the acquisition of the shares of the company by the acquirers. The

investigation conducted by SEBI found that, though the acquirers had acquired the shares of the company on preferential basis, prima facie the said acquisition failed to comply with certain pre-conditions, as specified under Regulation 3 (1) (c) of the Takeover Regulations (as on the date of acquisition) for obtaining an exemption, from the applicability of Regulation 11 (1) of the Takeover Regulations. Besides, the acquirers prima facie failed to comply with the disclosure requirements as specified under Regulations 6(1), 6(3), 7(1) and 7(2) of the Takeover Regulations. The company was also found to prima facie have violated certain disclosure requirements specified under Regulations 6(2), 6(4) and 7(3) of the Takeover Regulations. Therefore, a notice dated September 19, 2000 was issued by SEBI to the acquirers and the company asking them to show cause as to why appropriate directions under section 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) read with Regulations 44 and 45 of the Takeover Regulations should not be imposed against them.

2. The company, vide letter dated October 10, 2000, filed its reply, *inter alia* stating that the acquisition of its shares by the acquirers on preferential basis complied with the requirements specified in Regulation 3 of the Takeover Regulations, except for minor and unintended irregularities. The acquirers vide joint letter dated October 24, 2000 stated that they would like to make the same submissions as that of the company dated October 10, 2000. As the acquirers had prima facie violated the provisions of Regulation 11(1) of the Takeover Regulations in respect of the acquisition of shares of the company on preferential basis, SEBI had also initiated adjudication proceedings against them. The Adjudicating Officer, thus appointed, vide order dated July 24, 2001 imposed a monetary penalty of Rs 40,000/- against each of the acquirers. In the meanwhile, SEBI noticed unusual price movement in the shares of the company and therefore, vide order dated February 26, 2001, it ordered an investigation into the buying, selling and dealing in the shares of the company, for the period covered therein. SEBI granted an opportunity of hearing to the company and the

acquirers on October 5, 2001, on the alleged violations mentioned in the show cause notices dated September 19, 2000. Since the share price of the company moved unusually before and immediately after the above mentioned preferential allotment and in view of the fact that SEBI had already ordered investigation in respect of the unusual price movement of shares of the company, SEBI decided to dispose of the show cause notices on the alleged violation of the Takeover Regulations dated September 19, 2000 along with the disposal of the investigation *inter alia* on the alleged violation of the FUTP Regulations. The details of the price movement noticed in the shares of the company are as follows:

Phase	Period - from/to	Price movement (Rs.)
I	August 17, 1998 to September 4, 1998	9.90/- to 28.75/-
II	November 22, 1999 to March 10, 2000	10/- to 81/-
III	May 8, 2000 to May 26, 2000	27.50/- to 52.50/-

3. It was observed that during Phase I, one M/s Jai Shankar Investment Private Limited, through its director Mr. M. M. Miglani, had executed large scale trades in the shares of the company at DSE and BSE, through various stock brokers. The gross trading of the said entity in the shares of the company at BSE and DSE amounted to 48.75% of the total volume of the company traded during August 31, 1998 to September 4, 1998. Mr Miglani executed trades simultaneously as a buyer and seller at DSE through stock brokers namely, Integrated Master Securities Limited and VH Securities Limited at DSE. It was observed that Mr. Miglani had not only traded on his own account but also placed orders on behalf of promoter group entities of the company/front entities of Mr.S.L.Maloo, Chairman and Managing Director of the company, through various stock broker/sub brokers at DSE & BSE.

4. During Phase II, the net trading of Mr. M M. Miglani in the shares of the company was 13.09% of the net shares traded at BSE and DSE. In Phase III, the corresponding figure was 33.63%. Mr. Miglani submitted before the investigating authority of SEBI that his trades were at the behest of Mr.S.L.

Maloo. The investigation conducted by SEBI also found that there was flow of funds from the account of Mr. Miglani/Jai Shankar Investments Private Limited to the promoter group entities of the company/front entities of Mr. S.L. Maloo, during the period of investigation. Besides, funds had been transferred from Mr. Miglani/Jai Shankar Investments Private Limited to Mr. Rajiv Sharma, Partner of M/s. Rajeev Prakash and Co, Chartered Accountant of the company. Further, SEBI also received certain investor complaints against the company pertaining to non-receipt of shares sent for transfer. It was further alleged that there was delay ranging from 4 months to 3 years in registering transfer of shares. SEBI observed that the company and its directors namely, Mr. S.L. Maloo, Mr. R.K. Agarwal, Mr. M.C. Maloo, Mr. S.C.Sethia, Mr. K.K.Agarwal, Mr. Sunil Agarwal, Mr. D.D. Manger and Mr. Ashutosh Sharma, the promoter group entities of the company namely, Lunar Finance Limited and its directors namely Mr. S.L. Maloo and Mr. Sunil Agarwal, Yare Engineering Private Limited and its directors namely, Mr. Digambar Mandal, Mr M C Chhajer and Mr. Sunil Agarwal, Yashodanandan Investment Private Limited, Chakradhara Holdings Private Limited, Devakinandan Holdings Private Limited, Murliwala Holdings Private Limited and their directors namely, Mr. Sunil Agarwal, and Mr. Jaswant Saini, Sunraj Software Private Limited, Teknik Digital Systems Private Limited, Echo Chemicals Private Limited and its directors namely, Mr S.C Sethia, Mr. M C Chhajer and Mr. Sunil Agarwal and Emerald Housing & Constructions Private Limited prima facie violated the provisions of Regulations 4(a), (b), (c), (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as FUTP Regulations). Further, it was alleged that the company in nexus with the group companies namely Lunar Finance Limited and Castle Builders Private Limited had prima facie violated the provisions of Regulations 3, 6(a), 6(c) and 6(d) of the FUTP Regulations, as they had prima facie indulged in fraud on investors and had also fabricated its records. There were complaints against the company about the delay in demat transfer requests and out of turn demat transfer, prima facie violation of Section 113(2) of the Companies Act,

1956 and Regulation 6(c) of the FUTP Regulations. M/s Jai Shankar Investments Private Limited, its director namely Mr M.M. Miglani and Mr. Rajiv Sharma M/s Rajiv Prakash & Co, Chartered Accountants were also found to have prima facie violated Regulations 4(a) to (d) of the FUTP Regulations. Accordingly, notice dated April 23, 2008 was issued by SEBI to the aforesaid entities asking them to show cause as to why appropriate actions should not be imposed against them under the provisions of the Act and the FUTP Regulations, as stated in the show cause notice.

5. The company, Mr. S.L. Maloo and Lunar Finance Limited vide separate letters dated June 16, 2008 filed their respective replies. All the said letters were signed by Mr. S.L.Maloo. All of them have taken a similar stand in the matter. They *inter alia* stated that the show cause notice of SEBI was highly belated and issued after 8 years of the alleged transactions. Though, other entities (other than Mr. M. M. Miglani, M/s Jai Shankar Investment Private Limited and Mr. Rajiv Sharma) mentioned in the show cause notice dated April 23, 2008 failed to file any separate reply, it is only to be inferred from the abovementioned reply (dated June 16, 2008) that the said reply was also made on behalf of all the noticees (except Mr. M. M. Miglani, M/s Jai Shankar Investment Private Limited and Mr. Rajiv Sharma) mentioned in the show cause notice dated April 23, 2008, as it was specified therein that the promoters and their associates have no involvement in the manipulation in the share price of the company. According to them, the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 2003 Regulations) is not applicable to the present case. As per the said reply, Mr Miglani and his company M/s Jai Shankar Investments Private Limited were independent and they were not connected to the company. They further contended that the statement of Mr. Miglani (to SEBI) was made with malafide intention. According to them, the shares lodged by JPT Securities Limited (one of the complainants who had alleged delay in the transfer of shares) could not be transferred as the matter

became subjudice before the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. They claimed that the payments made by Mr. Miglani to the entities were made in the usual course of business. As for the delay in transfer of shares, they stated that the shares were returned due to mismatch of signatures. According to them, the shares purchased by the promoters were insignificant as compared to the sales made by them. They also stated that the company had not violated the provisions of Section 113 of the Companies Act, 1956. The company admitted that some of its shares got printed in duplicate due to faults in the computer system. Thereafter, the company vide letter dated July 31, 2008 inter *alia* denied their role in the alleged manipulation. They claimed that, there was no false market or price rigging in its shares and that the movement in share prices merely reflected the performance of the company and the market fundamentals and other technical factors such as movements in the stock market indices, volumes of trading etc. The company maintained that Mr. Miglani did not act at the instruction of any of its promoters in selling, purchasing or otherwise acting in any manner in relation to its shares. The company added that the only connection between Mr. Miglani with the company was that some of the entities namely Lunar Finance Limited, Murliwala Holdings Private Limited, Yashodanandan Investment Private Limited, Chakradhara Holdings Private Limited, Teknik Digital Systems Private Limited, Sunraj Software Private Limited sold shares to Mr. M.M. Miglani. According to the company, shares were sold to Mr. Miglani at the prevailing market price. The company denied having paid money to Mr. Miglani to purchase those shares. In respect of refusal to transfer the shares of the company, it stated that the same was not deliberate. While admitting the delay in demat transfer, they added that the same was without any malafide intention. With regard to the out of turn demat transfer requests of Mr. M.M. Miglani, the company stated that “.....*perhaps because the number of shares lodged for demat by him was 25,000 which was more than the number lodged by any other investor, as a matter of common practice the depositories had dematerialized it faster than for any other investor*”. The

company further added that, it had lost most of its records and backups due to an electric short circuit and consequent fire in their premises and burglary, for which a police complaint was lodged on June 27, 2002. According to the company, Mr. S.L. Maloo had complied with the summons of SEBI. In respect of the observation of the fund transfer amongst its group entities, the company stated "Websity never denied association with these entities". With regard to Justice Goswami Committee appointed by DSE on various acts of omissions and commissions including the non transfer of shares (mentioned in the show cause notice) the company stated that it had to forfeit the shares in question in order to raise working capital. Subsequently, vide letter dated October 30, 2008, the company stated that no actions could be taken under the provisions of the Takeover Regulations, as it is highly belated. In a separate letter dated October 30, 2008, the company stated that, Mr. Miglani had paid some money by cash for transactions of 1,00,000 shares. The company further added that the said Lunar Finance Ltd. was doing the business of trading of shares and investment. The company also stated that, Lunar Finance Limited and other associate companies through Lunar Finance Limited acquired shares through off market transactions. Along with the said letter, the company also filed the copy of a joint complaint dated June 27, 2002 signed by Mr. S.L.Maloo on behalf of the company and other linked entities namely, Victoria Jewellers Limited, Createch Solutions Limited, Teknik Digital Systems Private Limited, Lunar Diamonds Limited and Lunar Finance Limited, before the Okhla Industrial Area Police Station, New Delhi. It is relevant to note that the address of these companies (D-15/4, Okhla Industrial Area- I, New Delhi) was the same as that of the company itself.

6. Mr. Rajiv Sharma, Chartered Accountant, vide letter dated May 5, 2008 denied that there was any nexus amongst him, Mr. S.L.Maloo and Mr. M.M. Miglani He also denied that he had aided and abetted Mr Miglani in creating artificial market in the shares of the company. He stated that he would like to stand by his statement (to SEBI) dated August 18, 2004. Mr M. M. Miglani, vide

letter dated June 2, 2008 *inter alia* stated that there was no deliberate/planned attempt or fraudulent intention to cause harm to anybody. He further requested to pardon him for the human errors of omissions and commissions.

7. SEBI granted an opportunity to all the persons/entities mentioned in both show cause notices (dated September 19, 2000 and April 23, 2008), on October 16, 2008. The company vide letter (signed by Mr.S.L.Maloo) dated October 13, 2008 confirmed that Mr. S.L.Maloo would appear for the hearing on behalf of the company and its directors. Accordingly, Mr. S L Maloo appeared and made submissions on behalf of the company and its directors. Mr. M. M Miglani appeared on his behalf and Jaishankar Investment Private Limited. Mr. Rajiv Sharma also appeared and made submissions before me.

8. I have considered the show cause notices issued to various persons/entities as mentioned above, the oral as well as written submissions of the entities as stated above. I note that most of the noticees (except M/s Jai Shankar Investment Private Limited and its director, Mr. M.M. Miglani and Mr Rajiv Sharma) mentioned in both show cause notices dated September 19, 2000 and April 23, 2008, admittedly belonged to the promoter group or the associates of the company. Further, I note that the periods of the alleged violations in these show cause notices were more or less concurrent. Besides, one of the allottees under the preferential allotment on October 5, 1999, had also traded in the shares of the company during the period of investigation (in respect of price manipulation) and allegedly violated the provisions of the FUTP Regulations. Given this background, it would only be appropriate that both the show cause notices be disposed of jointly. Therefore, I proceed to dispose of both show cause notices in this common order, as discussed herein under. The issues for consideration before me are the following:

- a) Whether the company, Luxury Foams Limited, Echo Chemicals Private Limited , Yare Engineering Private Limited, TMS Boards &

Industries Private Limited, Cookfast Foods Private Limited, Econo Commercial Evaluators Private Limited, Ajay Roadways Private Limited, Castle Builders Private Limited, Dilli Soaps & Chemicals Private Limited, Rai Commercial Private Limited and CMC Marketing Private Limited, violated the provisions of Takeover Regulations as alleged in the respective show cause notice of SEBI dated September 19, 2000.

- b) Whether the company and its directors namely, Mr. S.L. Maloo, Mr. R.K. Agarwal, Mr. M.C. Maloo, Mr. S.C. Sethia, Mr. K.K. Agarwal, Mr. Sunil Agarwal, Mr. D.D. Manger and Mr. Ashutosh Sharma, Lunar Finance Limited and its directors namely Mr. S.L. Maloo and Mr. Sunil Agarwal, Yare Engineering Private Limited and its directors namely, Mr. Digambar Mandal, Mr. M C Chhajer and Mr. Sunil Agarwal, Yashodanandan Investment Private Limited, Chakradhara Holdings Private Limited, Devkinandan Holdings Private Limited, Murliwala Holdings Private Limited and their directors namely, Mr. Sunil Agarwal, and Mr. Jaswant Saini, Sunraj Software Private Limited, Teknik Digital Systems Private Limited, Echo Chemicals Private Limited and its directors namely, Mr. S.C. Sethia, Mr. M C Chhajer and Mr. Sunil Agarwal, Emerald Housing & Constructions Private Limited, Mr. Rajiv Sharma, Jai Shankar Investment Private Limited and Mr. M.M. Miglani violated the provisions of the FUTP Regulations and the Companies Act, 1956 as alleged in the respective show cause notice of SEBI dated April 23, 2008.

9. My findings on the above issues are as follows. The preferential allotment of the shares of the company in the year 1999 to the acquirers is not disputed before me. Admittedly, the Board of Directors of the company in their meeting held on October 5, 1999 made the preferential allotment of 41,81,700 fully paid

up equity shares of Rs. 10/- each and 4,40,00,000 partly paid up equity shares at the rate of Re.1/- each, for consideration other than cash to the acquirers as mentioned below:

Name of the allottee	No. of shares	%of shareholding
Luxury Foams Ltd.	43,80,000	6.083
Echo Chemicals Private Limited	43,80,000	6.083
Yare Engineering Private Limited	43,80,000	6.083
TMS Boards & Industries Private Limited	43,80,000	6.083
Cookfast Foods Private Limited	43,80,000	6.083
Econo Commercial Evaluators Private Limited	43,80,000	6.083
Ajay Roadways Private Limited	43,80,000	6.083
Castle Builders Private Limited	43,80,000	6.083
Dilli Soaps & Chemicals Private Limited	43,80,000	6.083
Rai Commercial Private Limited	43,80,000	6.083
CMC Marketing Private Limited	43,81,700	6.085
Total	4,81,81,700	66.915

The aforesaid allotment resulted in the increase of the shareholding of the promoter group (including the acquirers mentioned above) to 70.20 % from 32.99%.

10. There is no dispute on the fact that the acquirers belonged to the promoter group of the company. The company in its letter dated October 10, 2000 (reply to the show cause notice dated September 19, 2000) admitted so. This is more evident in the order of Hon'ble Securities Appellate Tribunal (SAT), dated March 20, 2002 (in the appeal filed by the acquirers against the order of the Adjudicating Officer of SEBI dated July 24, 2001). Hon'ble SAT, while dismissing the said appeal, *inter alia* observed "*It is on record that in the preferential allotment made by the company, each Appellant had acquired shares, that each Appellant belongs to the promoters group and according to their own admission they acted in concert*". Thus, the acquirers clearly had acted in concert. The acquisition of the shares of the company on preferential basis, by the acquirers, triggered Regulation 11(1) of the Takeover Regulations. Needless to say, the acquirers were required to make a public announcement in terms of Regulation 11 thereof, unless the said

acquisition was exempted from its applicability. Even this requirement was not disputed by the acquirers. Their contention was that, they had acquired the shares pursuant to the preferential allotment made by the company and therefore they need not make a public announcement. One cannot disregard the said argument. However, the said exemption was subject to certain preconditions. Under Regulation 3(1)(c) of the Takeover Regulations (as it stood prior to September 9, 2002), a preferential allotment made in pursuance of a resolution under Section 81(1A) of the Companies Act, 1956 was exempted from the applicability of Regulation 10, 11 or 12 (as the case may be), subject to the compliance of certain conditions specified therein. In the light of the said contention of the acquirers, it is necessary to refer to the relevant provisions of Regulation 3(1)(c) of the Takeover Regulations. Regulation 3(1)(c) (as it stood prior to September 9, 2002) is extracted below :

“3(1) Nothing contained in Regulations 10, 11 and 12 of these regulations shall apply to:

a....

b...

c. *preferential allotment, made in pursuance of a resolution passed under Section 81(1A) of the Companies Act, 1956 (1 of 1956) :*

Provided that, -

(i) board resolution in respect of the proposed preferential allotment is sent to all the stock exchanges on which the shares of the company are listed for being notified on the notice board;

(ii) full disclosures of the identity of the class of the proposed allottee(s) is made, and if any of the proposed allottee(s) is to be allotted such number of shares as would increase his holding to 5 per cent or more of the post issued capital, then in such cases, the price at which the allotment is proposed, the identity of such person(s), the purpose of and reason for such allotment, consequential changes, if any, in the board of directors of the company and in voting rights, the shareholding pattern of the company, and whether such allotment would result in change in control over the company are all disclosed in the notice of the general meeting

called for the purpose of consideration of the preferential allotment.”

11. Given the above factual background of the present case and the regulatory requirements as stated above, it is to be examined whether the acquirers had complied with the preconditions as specified in Regulation 3(1)(c) of the Takeover Regulations, in respect of their acquisition. In terms of the said Regulation, a preferential allotment would be exempted from the applicability of Regulations 10, 11 or 12, as the case may be, if it fulfils certain requirements/conditions. I am in agreement with the acquirers/company that, if the said requirements/conditions are fulfilled, the acquirers do not need to make a public announcement, in respect of their acquisition. According to me, at this juncture, the short point to be considered is whether the acquisition of the acquirers had fulfilled the preconditions specified in Regulation 3(1)(c) of the Takeover Regulations. The company in its reply dated October 10, 2000 admitted that the Board Resolution {as required in terms of Regulation 3(1)(c)} in respect of the proposed preferential allotment as such was not sent to the stock exchanges where its shares were listed. It is to be reiterated that the acquirers adopted the reply of the company in toto. According to them, only intimation needs to be given to the stock exchanges about the decision of the company to allot shares on preferential basis and that such intimation would satisfy the requirement. The company/acquirers admitted that the difference in the format of communication (to the stock exchanges) occurred because of lack of experience of its employees. According to the company, dispatch of communication to the stock exchanges under certificate of posting would be a valid delivery. I am unable to agree with such a contention. The purpose of this communication to stock exchanges is two fold. Firstly, the Board Resolution should be communicated to stock exchanges and that the said Resolution is to be notified on the notice board of the stock exchanges. This would also ensure transparency. Therefore, to satisfy the second requirement (notification on the notice board), the information (board resolution) should reach the stock exchanges. Clearly, the obligation of the company does not end by simply

mailing the information. The acquirers have a mandatory duty to see that the said information reaches the stock exchanges for further notification on the notice board. Further, the pleas advanced (such as change in format, lack of experience) are too naïve considering the requirement specified in Regulation 3(1)(c)(i) of the Takeover Regulations. I do not find anything to support the version of the acquirers in the above aspect. The Hon'ble SAT, in the appeal mentioned above, *inter alia* observed "*The regulation specifically refers to "Board resolution" and W.S.L should ensure that the copy of the Board Resolution making allotment is sent to the Exchanges. Even the intimation that was sent does not conclusively say that preferential allotment is made. It merely states that the Board of Directors would again meet to consider this.*

Hence, I find that due to omission of WSL by not sending the Board Resolution, the acquirers have not got the benefit of compliance with the provisions of Regulation 3(1)(c)(i) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997."

12. Admittedly, the acquisition of the acquirers resulted in the increase of shareholding of the promoter group in the company by more than 5%. In such a case, Regulation 3(1)(c) of the Takeover Regulations mandates the disclosure of identity of allottees, consequential changes, if any, in the board of directors of the company and in voting rights, shareholding pattern of the target company, and whether such allotment would result in change in control over the target company in the notice of the general meeting called for the purpose of consideration of the preferential allotment. The company, in its reply stated that, it had inadvertently mentioned that there was no change in shareholding. However, in fact there was change in shareholding, pursuant to the above mentioned allotment of shares on preferential basis. It is not in dispute that the shareholding of the promoter group of the company increased from 32.99% to 70.20% of the total equity capital of the company. Besides, in its letter (reply to the show cause notice dated September 19, 2000), the company, admitted that additional directors were appointed to broaden its Board. It is undisputed that as a result of the acquisition of further shares of the company by its promoter group, the share holding of the promoters also changed. Admittedly, it was not

disclosed in the notice. It was also required to be stated in the notice that the preferential allotment would result in changes in the control of the company. If there was no change, the same has to be mentioned in the notice of the general meeting called for the purpose of consideration of the preferential allotment, as required under Regulation 3(1)(c) of the Takeover Regulations. In respect of compliance of conditions specified in Regulation 3(1)(c) of the Takeover Regulations, Hon'ble SAT, in the case cited supra, observed “
.....It is seen from the impugned order that the Appellants had informed the Adjudicating Officer that "class of proposed allottees was given as body corporates and inclusion of entire proposed allotment in the promoters group under para 6 of item no.2 of the Explanatory Statement clearly showed that WSL planned to issue shares to the promoters on preferential basis". The Appellants have not filed a copy of the said notice in the proceedings. However the Adjudicating Officer has recorded that "In para 1, under item no.2 of the explanatory statement, it is stated that". "The company has planned to issue equity shares to promoters / non-promoters on private placements, by issuing shares on preferential basis.....". That means the shares can be allotted to either the promoters or to non-promoters. However pt.1 of item No.2, it is stated that "It is proposed to issue 4, 81, 81, 700 equity shares to the following body corporates as per details given below.....". From the records it is seen that these body corporates belong to the promoter group companies. This fact should have been disclosed in pt. No.1 of item No.2. Hence I accept the observations of the SEBI investigations as contained para 2.0 above and find that the acquirer / WSL has not made proper disclosure on the count". The obligations specified at Regulation 3(1)(c) of the Takeover Regulations are preconditions to avail exemption from the applicability of Regulations 10, 11 or 12, as the case may be. No relaxation can be granted in respect of such preconditions. Besides, disclosure of the specified information in the notice is essential from the point of view of the public shareholders, as the details so furnished would help them to take an informed decision about their investments in the company. The disclosure requirement of the relevant information is vital in the present case, as the preferential allotment had resulted in the reduction of the public shareholding from a substantial 67.01% to a meager 22.17% of the total equity capital of the company. On the other hand, the

holding of Promoters/Promoters group increased from 32.99% to 70.20%. If the acquirers were keen to obtain the exemption under Regulation 3(1)(c) under Takeover Regulations, as stated above, they would have complied with the preconditions mentioned thereof.

13. Hon'ble SAT further observed in the above case that, *"In the absence of any material produced before me by the Appellants, proving proper compliance of the requirements of regulation 3(1)(c)(i) and 3(1)(c)(ii), the Respondent's version based on the facts discussed in the report that the requirements of the said regulations have not been complied with by the Appellants, have to be accepted. It is to be noted that regulation 3 provides exemption from complying with the requirements of regulation 10, 11, 12 in respect of certain type of acquisitions stated in the said regulation. The requirement of compliance in terms of regulation 10, 11, 12 is by the acquirer. So if the acquirer is keen to avail of the exemptions, it is for him to satisfy as to whether the preconditions required to be complied with to avail exemption have been complied with or not "*.

14. Admittedly in the present case, all the preconditions specified in the Regulation 3(1)(c) of the Takeover Regulations were not adhered to fully in respect of the acquisition pursuant to the preferential allotment of the company. As the acquirers had failed to comply with the complete requirements of Regulation 3(1)(c) of the Takeover Regulations (before it was deleted with effect from September 9, 2002), they were not eligible for the grant of exemption in respect of their acquisition. Hon'ble SAT in the matter of Arya Holding Ltd V. P. Sri Sai Ram, Adjudicating Officer *inter alia* observed as below:

"..... it is clear from the provisions of regulation 3(1)(c) cited above that an acquisition pursuant to a preferential allotments simplicitor will not be eligible for exemption unless the requirements stipulated in clauses (i) and (ii) are complied with. In this context it is pertinent mention that since the law specifically provided that the exemption is subject to compliance of certain requirements specified there in, to avail the exemption it is absolutely necessary to comply with the specified

requirements."

15. In view of the non compliance of the preconditions, the acquirers are not entitled for the grant of exemption under Regulation 3(1)(c) of the Takeover Regulations. Besides, no public announcement was made in respect of their acquisition of shares of the company. Thus, acquisition of shares by the acquirers/promoter group of the company without making a public announcement and without obtaining the grant of exemption in respect of their acquisition was detrimental to the interests of the public shareholders of the company and in violation of the provisions of Regulation 11(1) of the Takeover Regulations. Once it is proved that an acquisition does not have the benefit of exemption in terms of the provisions of the Takeover Regulations, then such acquirer is mandatorily required to comply with the provisions of Regulations 10, 11 or 12, as the case may be. One of the pertinent factors to be mentioned here is that the acquirers had preferred an appeal before the Hon'ble High Court of Delhi against the order of Hon'ble SAT dated March 20, 2002 which in turn upheld the order of the Adjudicating Officer imposing penalty. The Hon'ble Delhi High Court, vide order dated November 21, 2007 rejected the appeal and *inter alia* observed "*The remedy of the appellants is to file the appeal before the Supreme Court*". Thereafter, the appeal filed by the acquirers was dismissed by the Hon'ble Supreme Court of India vide order dated April 21, 2008. However, even after the lapse of considerable time (more than seven years), the acquirers have not paid the penalty imposed by the Adjudicating Officer of SEBI, subsequently upheld by the Hon'ble Supreme Court of India. It is pertinent to note here that the acquirers continue to remain in blatant violation of the order of the regulatory body which was further upheld by the appellate forums including the Hon'ble Supreme Court of India. I do not accept the contention that the proceedings are belated. SEBI decided to dispose of both show cause notices together in view of the noticed unusual price movement in and around the period of preferential allotment. Further, the investigation conducted by SEBI also observed that one of the allottees had traded in the shares of the company during the period of

investigation. Besides, most of the persons/entities mentioned in the show cause notices (except Mr.M.M.Miglani, M/s Jai Shankar Investment Private Limited and Mr Rajiv Sharma) admittedly belonged to the promoter group/associates of the company. It was in this backdrop that SEBI decided to dispose of the show cause notices on the alleged violation of the Takeover Regulations dated September 19, 2000 along with the disposal of the investigation *inter alia* on the alleged violation of the FUTP Regulations. Given the history of this case and the course of past events, it is only just and proper to continue the proceedings and complete it expeditiously now. I, therefore disallow the plea of the parties that the proceedings are delayed. Ironically, this plea of delay comes from the entities/acquirers who have persistently refused to comply with an order of the Regulatory body subsequently upheld by the Appellate Forums including the Hon'ble Supreme Court of India.

16. It is also established that the acquirers had not given disclosure in terms of Regulations 7(1) of the Takeover Regulations within the time stipulated under Regulation 7(2), thereof. The object of disclosure requirement in terms of Regulation 7 on the part of the acquirers is two fold. On one hand it requires an acquirer who acquires 5% or more shares of voting rights to disclose to the company the aggregate of his holdings in that company. Secondly, the company is required to disclose the same to the stock exchanges on which its shares are listed. These disclosures would primarily make the investors of the company aware of the identity of the acquirers holding 5% or more shares in the company. Accordingly, on the basis of these informed decisions the shareholders of such company gets an exit opportunity in case the change in shareholding in the company is not to their satisfaction. Most importantly, the requirement under Regulation 7(1) and 7(2) of the Takeover Regulations is that the information pertaining to the aggregate of his holding, as stated therein, should reach the company within the time specified. This is a mandatory statutory requirement and cannot be waived in the interest of the public shareholders of the company. Such omissions cannot be considered lightly either. In the present case, as discussed

above in this order, the shareholdings of the promoter group increased substantially whereas public shareholding declined noticeably. This would clearly indicate the impact of non disclosure requirements. The provisions of disclosure requirements are put in place to ensure transparency and ensure dissemination of vital information to the shareholders and management of the company, in matters of substantial acquisition of shares or control. Besides, the acquirers failed to submit in respect of the alleged violations of the provisions of Regulation 6(1) and 6(3) of the Takeover Regulations. It was also alleged that the company had violated certain norms in respect of disclosure requirement to the stock exchanges under regulation 7(3) of the Takeover Regulations. Though, the acquirers had not given the required information to the company as required under regulation 7(2) of the Takeover Regulations, since they belonged to the promoter group, the company should have furnished the relevant information to the stock exchanges. Besides, DSE had also informed SEBI that the company had failed to comply with Regulation 6(2) and 6(4) of the Takeover Regulations. Further, the company/acquirers maintained silence on these violations. No submission was made either by the company or by the acquirers in respect of the charge of violation of disclosure requirements. The only conclusion that would logically follow, is that the company violated the disclosure requirements (Regulations 6(2) and 6(4) of Takeover Regulations), as stated in the show cause notice dated September 19, 2000. In the facts and circumstances of the present case, I do not have any hesitation to hold that the acquirers namely, Luxury Foams Limited, Echo Chemicals Private Limited, Yare Engineering Private Limited, TMS Boards & Industries Private Limited, Cookfast Foods Private Limited, Econo Commercial Evaluators Private Limited, Ajay Roadways Private Limited, Castle Builders Private Limited, Dilli Soaps & Chemicals Private Limited, Rai Commercial Private Limited, CMC Marketing Private Limited have violated Regulation 11 (1) of the Takeover Regulations and Regulations 6(1), 6(3), 7(1) read with 7(2) of the Takeover Regulations, as stated in the show cause notice dated September 19, 2000. It is also established that the company violated the provisions of Regulations 6(2), 6(4) and 7(3) of the Takeover

Regulations. The issue at Para 8(a) is answered accordingly. The said violations on the part of the acquirers and the company call for a direction as ordered below in this order.

17. Before examining the issue at para 8(b) pertaining to the alleged violations of the provisions of the FUTP Regulations and Companies Act, 1956, it would be pertinent to summarise the factual background (as at the time of investigation by SEBI) of the buying, selling and dealing into the shares of the company:

- i) DSE conducted an investigation into the price variation in the shares of the company for the periods August 1998 to October 1998 and November 1999 to February 2000. DSE report indicated an unusual price movement in the shares of the company during the said period.
- ii) SEBI received complaints from various investors regarding non-receipt of shares sent for transfer of the company. It is pertinent to note that with effect from May 08, 2000, the settlement of trading in the shares of the company was to be compulsorily conducted under the rolling settlement mode and in demat form. Therefore, the investors who did not receive the shares lodged for transfer were deprived of an exit route.
- iii) SEBI received a letter dated February 28, 2000 from DSE, *inter alia* enclosing therewith the correspondence between Department of Company Affairs and one Chandausi Investors Forum dated January 06, 2000. It was stated that Regional Director, Department of Company Affairs, Kanpur vide order dated July 15, 1999 had directed the company to revert back to its old name of 'Sunrise Securities Limited' as it had failed to comply with the directions of the Hon'ble Company Law Board, New Delhi passed in its order

dated May 13, 1998 *inter-alia* directing the company to refund the matured fixed deposits. Since, the company had not complied with the orders of Department of Company Affairs, DSE suspended the trading in the scrip of the company from February 28, 2000, for non-compliance of the listing agreement. Subsequently, the company on March 14, 2000 issued a public notice *inter alia* promising to resolve all pending investor complaints by March 20, 2000. DSE therefore revoked the suspension of trading from March 15, 2000 onwards. SEBI also received a letter of Reserve Bank of India dated March 25, 2000 stating therein that the company had not adhered to the repayment schedule as prescribed by the Company Law Board in their order dated May 18, 1998. The Central Government vide its order dated July 05, 2000 rejected the appeal of the company against the order dated July 15, 1999 passed by the Regional Director, Department of Company Affairs, Kanpur directing change of name from 'Websity Infosys Limited' to Sunrise Securities Limited.

- iv) SEBI also received a letter dated March 04, 2000 from Allahabad Bank *inter-alia* complaining that in order to secure a loan facility, the company had pledged its 25 lakh shares along with blank transfer deeds with the Bank. When the said bank tendered the share certificates of 5 lakh shares for converting the same into marketable lots of 100 shares each (vide letter dated January 24, 2000), the company rejected the request. Thus, the said bank was denied the opportunity to realize its dues. The Bank also complained that the company refused the conversion of shares pledged by it on some flimsy grounds.

18. Most of the entities (other than Mr. M.M. Miglani, M/s Jai Shankar Investment Private Limited and Mr Rajiv Sharma) mentioned in the show cause

notice dated April 23, 2008 admittedly belonged to the same group. In view of the above matrix of relationships, all the entities (other than Mr. Miglani, M/s Jai Shankar Investment Private Limited and Mr Rajiv Sharma) mentioned in the show cause notice dated April 23, 2008 are hereinafter collectively referred to as noticees for the sake of brevity. The noticees raised a preliminary objection that the show cause notice is bad in law in so far as the applicability of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 2003 Regulations) is concerned. Their argument was based on the fact that the alleged violations had taken place prior to the notification of the aforesaid Regulations. I find no merit in their argument. The issuance of show cause notice under the provisions of 2003 Regulations was necessitated because of the repeal of the FUTP Regulations with effect from the notification of 2003 Regulations. However, in terms of the provisions of Regulation 13 of 2003 Regulations, any investigation pending at the commencement of the 2003 Regulations shall be continued and disposed of in accordance with the procedure laid down in the said Regulations (2003 Regulations). Though the show cause notice was issued under the provisions of 2003 Regulations (as the same was dated April 23, 2008), charges levelled against the noticees are of the provisions of FUTP Regulations. The said alleged violations are specified in the show cause notice dated April 23, 2008 itself. I do not find any reason to accept the argument of the noticees on this count.

19. Coming to the unusual price movement noticed in the shares of the company, the investigation conducted by SEBI observed that the share price of the company moved in the manner shown in the table in Para 2 above.

20. I note that during the period of investigation, majority of the shares of the company were held either by the promoter group or the associates of the company. One of the allottees under preferential allotment, as mentioned in this

order had traded during the period in phase II. Since the alleged charges primarily centre around the manipulation in the shares of the company, it is pertinent to mention the major shareholders of the company during the period of investigation. The details of major shareholders of the company, as per SEBI investigation are as follows:

Name of entity	Relevant period/ dates						
	1.8.98	1.1.99	30.9.99	Pref.Alt.	15.1.00	1.5.00	31.5.00
Ajay Roadways Pvt. Ltd.*	1330900	743000	730900	4380000	5110900	4880100	4880100
Castle Builders Pvt. Ltd.*	1350200	650200	650000	4380000	5030200	4937000	4937000
Chakradara Holding	-	-	-	-	783700	929200	688300
CMC Marketing Pvt. Ltd.*	-	-	-	4380000	4381700	4381700	4381700
Cookfast Foods Pvt. Ltd.*	-	-	-	4380000	4380000	4380000	4380000
Dilli Soap & Chemicals Pvt. Ltd.*	241200	241200	241200	4380000	4621200	4621300	4621300
Echo Chemicals Pvt. Ltd.*	570000	570000	570000	4380000	5354400	5460800	5040100
Econo Commercial Evaluators Pvt. Ltd.*	-	12300	-	4380000	4392300	4943000	4941800
Emerald Housing	-	-	758000	-	789700	1069800	684000
Lunar Finance Ltd.*	2434500	2423100	2431000	-	2698100	2979800	2896800
Luxury Foams Ltd.*	-	-	-	4380000	4980000	4979400	4979400
MM Miglani	-	-	-	-	-	-	75000
Murliwala Holding	-	-	-	-	-	755000	615100
Rai Chemical Pvt. Ltd.*	679900	679900	679900	4380000	5059900	4980000	4980000
Sunraj Soft P Ltd.	-	700	2215200	-	1491400	1120900	-
Teknik Digital Syst	210000	-	-	-	-	-	-
TMS Board & Industries Pvt. Ltd.*	1618500	613900	383900	4380000	4380000	5380000	5380000
Uchit Mar & Impex	-	-	1750100	-	2059800	112700	-
Yare Engineering Pvt. Ltd.*	250000	-	-	4380000	5138300	5242100	4870200
Yashodanandan Inv.	-	-	-	-	-	1132300	456000
Total	8685200	5934300	10410200	48180000	60651600	62285100	58806800

* Entities, admittedly belonging to the promoter group of the company.

21. Further, Murliwala Holdings Private Limited, Emerald Housing & Constructions Private Limited shared the same address i.e. 15A/ 38, WEA, Karol Bhag, New Delhi. Similarly, Yashodanandan Investment Private Limited, Chakradhara Holdings Private Limited and Teknik Digital Systems Private

Limited also shares the same address i.e. 73, Vijay Block, 3rd Floor, Laxmi Nagar, Vikas Marg, New Delhi. Amongst the entities mentioned in the above table, SEBI issued show cause notice dated April 23, 2008 to Murliwala Holdings Private Limited, Emerald Housing & Constructions Private Limited, Yashodanandan Investment Private Limited, Chakradhara Holdings Private Limited, Teknik Digital Systems Private Limited, Lunar Finance Limited, Sunraj Software Private Limited, Echo Chemicals Private Limited, Yare Engineering Private Limited and Devkinandan Holdings Private Limited (including their respective directors) and the company. Nobody has disputed the association amongst the said entities, the said entities and the company/Mr. S.L. Maloo, during the course of hearing. Mr. S.L.Maloo made reply/submissions on behalf of the company/ directors and Lunar Finance Limited. It would indicate that the majority of the shares of the company were held by the associates/promoter group of the company or Mr. S.L.Maloo, Chairman and Managing Director of the company. The shareholding of such persons reached its peak, pursuant to the preferential allotment made by the company, as stated above in this order.

22. As borne out from the table at para 20, substantial chunk of the floating stock of the company was with its promoter group/associates. The investigation conducted by SEBI observed that the share price of the company moved from Rs.10/- to Rs.29.20/- at DSE, during Phase I. The share price of the company moved from Rs. 10/- (on August 3, 1998) to Rs. 9.90/- (closing price on August 13, 1998). The next trading day (August 17, 1998), the share price opened at Rs.11.25/- and thereafter, the same increased to Rs. 29.20/- on September 2, 1998. Similar increase was also observed in BSE. As per the information provided by various stock brokers, trade details in the shares of the company in settlement No.24 at BSE (August 31, 1998 to September 4, 1998) are as follows:

Name of the stock broker	Buy	Sell	Gross	Net
Integrated Master Securities Ltd.	1800	800	2600	1000
TCP Stock Brokers	600	300	900	300
E'L Dorado Gurmt.	0	700	700	-700
Nirmal Bang Sec.	0	500	500	-500

Panaroma Sh. & St.	0	100	100	-100
Total	2400	2400	4800	0

The trades at DSE in the same settlement involved 51,600 shares of the company.

23. The above table indicates that the trades of M/s Integrated Master Securities Limited in the shares of the company accounted for 54.16% of the total trading at BSE, in the said settlement. Further, its buy volume was 75% of the total (buy volume) in the shares of the company at BSE. In contrast, large number of trades involving substantial shares of the company took place at DSE during Phase I. During the said period, most of the trades in the shares of the company at DSE were executed by the stock brokers namely, M/s V.H. Securities Ltd. and M/s Integrated Master Securities Ltd. The trades of the above mentioned stock brokers accounted for a substantial portion of the total volume of the company at DSE during phase I. The settlement wise trading of the said stock brokers at DSE is as follows:

Settlement period	Integrated Master Sec. Ltd.		VH Securities Ltd.	
	Buy	Sell	Buy	Sell
17/08/1998-21/08/1998	1500	3000	2700	1600
24/08/1998-28/08/1998	5800	5200	4400	6900
31/08/1998-04/09/1998	10800	2500	2300	10800
Total	18100	10700	9400	19300

24. The said stock brokers executed trades for substantial volume as compared to other stock brokers. A comparison of such trades is given below:

Settlement period	Total volume at DSE	Volume of the stock brokers M/s V.H. Securities Ltd. and M/s Integrated Master Securities Ltd.	% of trading to total volume at DSE
17/08/1998-21/08/1998	20,800	8,800	42.30
24/08/1998-28/08/1998	61,000	22,300	36.55
31/08/1998-04/09/1998	51,600	26,400	51.16

All the above mentioned trades of M/s V.H. Securities Ltd. and M/s Integrated Master Securities Ltd. were on behalf of M/s. Jai Shankar Investment Private Limited

acting through its director Mr. Miglani.

25. Thus, during phase I, majority of the trades in the shares of the company at BSE and DSE were executed by Mr. M.M. Miglani on behalf of his company M/s. Jai Shankar Investment Private Limited. Mr. Miglani traded simultaneously as a buyer and seller through the stock brokers namely M/s V.H. Securities Ltd. and M/s Integrated Master Securities Ltd. The details of his trades are as under:

Date	No. of trades	Quantity traded(no. of shares)	Price (Rs.)
18/08/1998	2	300	12.85, 12.90
19/08/1998	6	1000	14.80,16.25,14.85,15.50,15.75
21/08/1998	1	100	22
25/08/1998	1	100	25.25
28/08/1998	5	1000	26,26.25,26.75,26.50,26.25
31/08/1998	22	4100	28.20,28.15,27.50,27.60
01/09/1998	2	300	28.55, 29
04/09/1998	1	100	28.75
Total	40	7000	

The above trades for 7,000 shares (single sided) of the company accounted for 10.48% of the total trading volume of the shares of the company at DSE (single sided) during August 17,1998 to September 4, 1998. Further, it can be seen that by putting these trades, the share price of the company had resultantly increased.

26. Besides, during the second phase, Mr. M.M. Miglani had not only traded on his own account but also allegedly placed orders on behalf of front entities of Mr. S.L.Maloo/associates of the company through various stock brokers/sub-brokers of DSE and BSE. The trade details of Mr. Miglani (own trades) in the shares of the company during phase II are as under:

Name of Broker/sub-broker	Buy	Sell	Gross	Net
VP Consultants, (Sub-broker of M/s Suresh Rathi Securities, member BSE)	0	6,65,800	6,65,800	6,65,800
DNA Securities (sub-broker of Mukesh Gupta & Co., member	0	59,900	59,900	-59,900

DSE and Integrated Master, member BSE)				
Stride Financial Services P Ltd. (sub-broker M/s KB Malik & Co., member DSE)	46,000	2,51,200	2,97,200	-2,05,200
Integrated Master, DSE	1,400	500	1,900	900
Money Makers, BSE	12,300	43,800	56,100	-31,500
VH Securities, DSE	0	1,69,200	1,69,200	-1,69,200
Total	59,700	11,90,400	12,50,100	-11,30,700

27. The net trading of Mr. M. M. Miglani (11,30,700 shares) in the shares of the company was 13.09% of the net trades in the shares of the company at BSE and DSE. Mr. Miglani stated that the shares sold by him belonged to the front entities of Mr. S.L. Maloo/associates of the company and the same were sold by him without getting the shares transferred in his name. Besides, other entities either connected to the promoter group of the company or Mr. S.L. Maloo had also traded in the shares of the company, during phase II. The details are mentioned below:

Name of entity	Name of Broker/ sub-broker	Buy	Sell	Gross	Net
Lunar Finance Ltd.	Integrated Master, BSE	249900	21,13,100	23,63,000	-18,63,200
	NCJ Share, BSE	0	4,28,000	4,28,000	-4,28,000
Yare Engineering P Ltd.	Integrated Master, BSE	0	1,35,000	1,35,000	-1,35,000
Chakradhara Holding Pvt. Ltd.	DNA Securities	0	43,000	43,000	-43,000
	SG Securities	0	1,39,900	1,39,900	-1,39,900
Devkinandan Holding Pvt. Ltd.	DNA Securities	0	2,57,700	2,57,700	-2,57,700
	SG Securities	0	77,300	77,300	-77,300
Murliwala Holding Ltd.	SG Securities	0	1,81,200	1,81,200	-1,81,200
Yashodanandan Holding Pvt. Ltd.	DNA Securities	0	55,000	55,000	-55,000
	SG Securities	0	2,87,700	2,87,700	-2,87,700
Teknik Digital Sys Pvt.Ltd.	VH Securities Ltd., DSE	64,500	36,200	1,00,700	28,300

Sunraj Software Pvt. Ltd.	SG Securities	0	2,00,000	2,00,000	-2,00,000
Emerald Housing Pvt. Ltd.	SG Securities	0	1,72,300	1,72,300	-1,72,300
MM Miglani Group	As mentioned in the Table at Para 26	59,700	11,90,400	12,50,100	-11,30,700
Yare Engineering Pvt. Ltd., Murliwala Holding Pvt. Ltd., Devkinandan Holding Pvt. Ltd., Yashokanandan Pvt. Ltd. Chakradhara Holding Pvt. Ltd. Echo Chemicals Pvt. Ltd.	Timex Share Services	9,81,500	19,22,500	29,04,000	-9,41,000
	Total	13,55,600	72,39,300	85,94,900	-58,83,700

28. The net trading of the front/associates of the company including Mr. Miglani amounted to 68.13% of the net shares traded in the shares of the company at BSE and DSE during November 22, 1999 to March 10, 2000, during phase II. In this period, the share price moved from Rs. 10/ to Rs. 81/-. Majority of the trades during this period were executed by Mr. Miglani or the associates/linked entities of the promoter (Mr. S.L. Maloo) of the company.

29. Even during the third phase (from May 8, 2000 to May 25, 2000 till the trading in the shares of the company was suspended by DSE with effect from May 26, 2000) , Mr. M.M. Miglani executed trades in the shares of the company (at DSE and BSE), through various stock brokers/sub brokers, as mentioned below:

Name of Broker/sub-broker	Buy	Sell	Gross	Net
Integrated Master, BSE	9040	7075	16115	1965
NC Jain, BSE	700	11030	11730	-10330
VP Consultants	1000	5800	6800	-4800
DNA Securities, BSE	2850	2000	4850	850
SG Securities, BSE	0	3200	3200	-3200
Integrated Master, DSE	1100	1800	2900	-700
Delhi Securities, DSE	1750	555	2305	1,195

Total	16440	31360	47900	-15020
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30. The above trades accounted for 33.63% of the total volume in the shares of the company at DSE and BSE during phase III. Mr. M.M. Miglani also traded substantially as a buyer and seller through the stock brokers namely, Integrated Master Securities and Delhi Securities Ltd. His trades in comparison of the total trades in the shares of the company at DSE during the said period are shown below:

Date	Broker/ sub-broker	Shares purchased/sold by Mr. MM Miglani	(single-sided trading at DSE)	% of total shares dealt by Mr. MM Miglani vis-à-vis DSE
08/05/2000	Delhi Securities	+1,000		
	Net	1000	2000	50%
09/05/2000	Delhi Securities	-5		100
	Net	5	5	100%
11/05/2000	Delhi Securities	+200		
	Net	200	200	100%
16/05/2000	Integrated Master	-1000		
	Net	1000	1000	100%
17/05/2000	Integrated Master	-100		
	Net	100	100	100%
18/05/2000	Delhi Securities	+200		
	Integrated Master	+300		
	Integrated Master	+500		
	Net	+1000	1000	100%
22/05/2000	Delhi Securities	+200		
	Integrated Master	-200		
	Net	200	200	100%
23/05/2000	Delhi Securities	-50		
	Delhi Securities	-50		
	Delhi Securities	-100		
	Delhi Securities	-40		
	Delhi Securities	-60		
	Delhi Securities	-100		
	Integrated Master	-200		
	Integrated Master	-300		
	Net	900	1000	90%
24/05/2000	Delhi Securities	-50		
	Net	50	300	16.66%
25/05/2000	Delhi Securities	+50		
	Delhi Securities	-100		
	Integrated Master	+100		
	Delhi Securities	+100		
	Integrated Master	+100		
	Integrated Master	+100		

	Net	450	500	90%
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31. Similarly, Mr. M .M. Miglani's trades in the shares of the company accounted for 32.88% of the total trading in the shares at BSE. Needless to say, during the period of investigation, Mr. Miglani or the promoter group/ associates of the company traded in the shares of the company. Undoubtedly, their trades created misleading appearance of trading in the shares of the company, which had also resulted in artificial increase in the price. The share price had also increased during the time of their trades. Mr. Miglani, in his written submission (dated July 26, 2004) stated that his trades in the shares of the company were at the behest of Mr. S.L. Maloo. As, at this juncture, the roles of Mr. M M. Miglani, M/s Jai Shankar Investment Private Limited and noticees (other than the company and Mr. S.L.Maloo) are being examined, the relevant portion of Mr. M M. Miglani written submission (in respect of the role of Mr. S.L.Maloo) is extracted at an appropriate place in the succeeding paragraphs of this order. Further, I also note that, Mr. Miglani had made payments from his current account no. 6341 maintained with Vijaya Bank, Barakhamba Road, New Delhi to various associate of the company. This is not disputed before me. The details of fund transfers are given below:

Date	Cheque	Amount	Payments made by Mr. M.M. Miglani to	Payment received by Mr. M.M. Miglani from
18/12/1999	860030	10,00,000	Lunar Finance Ltd.	VP Consultants P. Ltd.
04/01/2000	860055	3,00,000	Murliwala Holdings P. Ltd.	VP Consultants P. Ltd
04/01/2000	860056	3,00,000	Yashodanandan Holdings	VP Consultants P. Ltd.
22/01/2000	860072	200000	Chakradhara Holdings P. Ltd.	VP Consultants P. Ltd.
08/05/2000	129611	3,25,000	Murliwala Holdings P. Ltd.	VP Consultants P. Ltd.
08/05/2000	129611	3,25,000	Murliwala Holdings P. Ltd.	VP Consultants P. Ltd.
08/05/2000	129611	3,25,000	Murliwala Holdings P. Ltd.	VP Consultants P. Ltd.
08/05/2000	129611	3,25,000	Murliwala Holdings P. Ltd.	VP Consultants P. Ltd.
10/05/2000	129615	1,00,000	Murliwala Holdings	VP Consultants P. Ltd.

			P. Ltd.	
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32. Similarly, Mr. M.M. Miglani made payments to the promoter group entities of the company from the bank account of M/s Jai Shankar Investment Private Limited maintained with State Bank of India, Azad Market, Nababganj, Delhi, (current account no. 39085). The details of fund transfers are given below:

Date	Cheque No.	Amount (Rs.)	Payments made by M/s Jai Shankar Investment Private Limited to	Payment received by M/s Jai Shankar Investment Private Limited from
09/04/1999	639294	4,00,000	Teknik Digital Systems P. Ltd.	VH Securities Ltd.
20/10/1999	00955206	2,50,000	Teknik Digital Systems P. Ltd.	VH Securities Ltd.
24/10/1999	00955207	2,50,000	Teknik Digital Systems P. Ltd.	VH Securities Ltd.
19/11/1999	00955213	2,00,000	Teknik Digital Systems P. Ltd.	VH Securities Ltd.
07/12/1999	00955217	3,40,096	Sunraj Software P. Ltd.	VH Securities Ltd.
07/12/1999	00955218	1,25,000	Sunraj Software P. Ltd.	VH Securities Ltd.
07/12/1999	00955219	25,000	Sunraj Software P. Ltd.	VH Securities Ltd.
26/12/1999	00955223	1,75,000	Teknik Digital Systems P. Ltd.	VH Securities Ltd.
26/12/1999	00955224	1,26,000	Teknik Digital Systems P. Ltd.	VH Securities Ltd.
26/12/1999	00955225	2,00,000	Teknik Digital Systems P. Ltd.	VH Securities Ltd.
26/12/1999	00955226	84,000	Teknik Digital Systems P. Ltd.	VH Securities Ltd.

33. Mr. M.M. Miglani admitted his role in the series of transactions in the shares of the company. He categorically stated that his trades in the shares of the company were with a specific purpose. Admittedly, on certain occasions, he simultaneously put buy and sell orders to determine the price at the stock exchanges. He stated that his synchronized trade for 200 shares (buy through Delhi Securities and sell through Integrated) of the company on May 22, 2000 at a price of Rs.43.45 when the last traded price was only Rs.40.25/- on May 18, 2000, was to keep the shares appear active. Admittedly, the said trade was the only trade that took place at DSE on that specific day. Some of his trades were not genuine as it was only for the purpose of determining the price at the stock exchanges. This is in clear violation of the provisions of Regulation 4(c) of FUTP Regulations. Hon'ble SAT, in the matter of Triumph International Finance Ltd Vs SEBI, *inter alia* observed "*It must not be forgotten that every trade establishes*

the price of the scrip and when the two brokers punch in the buy and sell orders simultaneously at a predetermined price which they fix and match the trades on the screen of the system they are obviously interfering with the fair price discovery process of the exchange and this would amount to manipulation and benchmarking the price. Such trades are prohibited by the unfair trade practices regulations framed by the Board". Thus, the act of Mr. Miglani to determine the price violates and jeopardizes the price discovery mechanism of the stock exchanges. Further, he executed number of trades involving substantial shares of the company and created misleading appearance of trading in the said shares. The fact that entities to/from which the aforesaid payments were made/received, by Mr. Miglani/ M/s Jai Shankar Investment Private Limited, belonged to the promoter group/associates of the company is not disputed before me. It is further supported by the bank account transfer details as mentioned above. Obviously, his trades, which were otherwise not genuine, created artificial increase in the share price of the company. Obviously, artificial increase in the volumes of scrip has an adverse effect on innocent investors who get induced to buy the shares in the securities market. Thus, the role of Mr. Miglani/ M/s Jai Shankar Investment Private Limited is established in the manipulation of the shares of the company. It goes without saying that the complicity of the entities namely, Murliwala Holdings Private Limited, Emerald Housing & Constructions Private Limited, Yashodanandan Investment Private Limited, Chakradhara Holdings Private Limited, Teknik Digital Systems Private Limited, Lunar Finance Limited , Sunraj Software Private Limited, Echo Chemicals Private Limited, Yare Engineering Private Limited and Devkinandan Holdings Private Limited in the scheme of manipulative trading outlined above in the shares of the company also automatically follows and hence gets established. This finding is based on the fact that majority of the trades of Mr. Miglani in the shares of the company involved the shares owned by them. Besides, the said entities had also traded in the shares of the company during the period covered under investigation as stated in the table at para 27. No satisfactory submissions that would dispute such a finding were made in this regard. On the other hand, Mr. S.L.Maloo

admitted that these entities transacted in the shares of the company. Besides, these findings have to be seen in the background of the nexus established amongst the said entities, as stated herein under.

34. The aforesaid entities are connected by way of common address and common directors. Some of such details are mentioned below:

a) Common address:

Name of entity (bank account no.)	Address
Murliwala Holdings P Ltd. (548226)	15A/38, WEA Karol Bagh, New Delhi*
Yashodanandan Investment P Ltd. (548227)	73, Vijay Block, 3 rd Floor, Laxmi Nagar, Vikas Marg, New Delhi
Emerald Housing & Construction Pvt. Ltd.	15A/38, WEA Karol Bagh, New Delhi
Chkradhara Holdings P Ltd. (548228)	73, Vijay Block, 3 rd Floor, Laxmi Nagar, Vikas Marg, New Delhi
Devkinandan Holdings P Ltd. (548229)	15A/38, WEA Karol Bagh, New Delhi
Yare Engineering P Ltd. (548232)	15A/38, WEA Karol Bagh, New Delhi
Lunar Finance Ltd. (548150)	73, Vijay Block, 3 rd Floor, Laxmi Nagar, Vikas Marg, New Delhi
Teknik Digital System P. Ltd.	73, Vijay Block, 3 rd Floor, Laxmi Nagar, Vikas Marg, New Delhi

* Same as that of Mr. S.L.Maloo.

b) Further, from the records obtained from Centurion Bank, Nehru Place, New Delhi, the said entities shared common directors/common authorised signatory, as stated below:

(i) In the bank account opening form of Murliwala Holdings Pvt. Ltd., Yashodanandan Investments Pvt. Ltd., Chakradhara Holdings Private Ltd., Devkinandan Holdings Pvt. Ltd., Mr. Sunil Agarwal and Mr. Jaswant Saini were shown as directors. Mr. Krishan Prasad was shown as co-director with Mr. Sunil Agarwal in the account opening form of Yare Engineering Pvt. Ltd. In all these bank

accounts, Mr. Sunil Agarwal was solely authorised to do the operations on behalf of the account holders.

- (ii) In the account opening form of Lunar Finance Ltd., Mr. S L Maloo was shown as director. The name and signature of Mr. M.C. Chajer and Mr. Sunil Agarwal were deleted on the account opening form. However, Mr. Sunil Agarwal had signed as director on a copy of resolution dated January 16, 1999 provided to the bank authorizing Mr. S. L..Maloo to sign documents relating to bank. The operation of this account was authorised only to Mr. S.L. Maloo. A perusal of the account statement of these entitles (other than Lunar Finance) shows very frequent receipts and payment from/to M/s Lunar Finance Ltd. and Victoria Jewelers Ltd., both entities belonging to Mr. S.L. Maloo

35. Besides, the connections established above, there were fund transfers amongst the said entities during the period of investigation. The details obtained from Centurion Bank, Nehru Place, New Delhi revealed the following:

- (i) In the account of Yashodanandan Investments Private Limited, a payment of Rs. 8.75 lakhs was made to Emerald Housing and Constructions Private Limited on February 17, 2000. On April 04, 2000 receipts from M/s Murliwala Holdings Private Limited and M/s Yare Engineering Private Limited were of Rs. 5 lakhs and Rs. 7 lakhs respectively.
- (ii) In the account of Chakradhara Holdings Private Limited, a payment of Rs. 8.50 lakhs was made to Emerald Housing and Constructions Private Limited on February 17, 2000. On March 03, 2000, a payment of Rs. 7.00 lakhs was made to Devkinandan Holdings Private Limited. On April 04, 2000, Rs. 7.50 lakhs was received from M/s Yare Engineering Private Limited.
- (iii) In the account of M/s Yare Engineering Private Limited, a payment of Rs. 25,000 was made to the company on April 04, 2000. Further on April 04, 2000, payments were made to Murliwala Holdings

Private Limited, Yashodanandan Investments Private Limited, Chakradhara Holdings Private Limited and Devkinandan Holdings Private Limited of Rs. 10 lakhs, 7 lakhs, 7.50 lakhs and 8 lakhs respectively.

- (iv) In the account of Devkinandan Holdings Private Limited, a payment of Rs. 7.25 lakhs was made to Emerald Housing and Constructions Private Limited on February 17, 2000. On April 04, 2000, receipt of Rs. 8.00 lakhs was shown from M/s Yare Engineering Private Limited.
- (v) In the account of Murliwala Holdings Private Limited, a payment of Rs. 8.50 lakhs was made to Emerald Housing and Constructions Private Limited on February 17, 2000. Further, on April 04, 2000, payments were made to Murliwala Holdings Private Limited, Yashodanandan Investments Private Limited, Chakradhara Holdings Private Limited and Devkinandan Holdings Private Limited of Rs. 10.00 lakhs, Rs. 5.00 lakhs, Rs. 7.50 lakhs and Rs. 8.00 lakhs respectively.

36. No explanation was made before me regarding the above fund transfers except that these were made in the normal course of business. Most of the transfers took place during the period of investigation. These are undisputed facts. It is to be noted that Mr. M.M. Miglani submitted that he had traded in the shares of the company on behalf of the promoter group of the company. The said entities had also traded separately in the shares of the company during the relevant period. Further, Mr. S.L. Maloo submitted before SEBI that Mr. Miglani might have offloaded the shares given to him by the promoter group of the company. These facts establish that the trades took place in the shares of the company by the promoter group of the company/Mr. Miglani on behalf of Mr. S.L.Maloo. Further, the above fund flows observed clearly establishes direct inter-linkages between the company and aforementioned entities namely Lunar Finance Limited, Murliwala Holdings Private Limited, Yashodanandan Investment

Private Limited, Chakradhara Holdings Private Limited, Devkinandan Holdings Private Limited and Yare Engineering Private Limited. The connection is evident also from the following fact:

- (a) Mr. Sunil Agarwal (director of these companies and also of the company) has signed letters addressed to SEBI sent by these companies and the company, as authorised signatory
- (b) Mr. M.M. Miglani has stated in his statement before SEBI that these entities belonged to Mr. S L Maloo and Mr. Sunil Aggarwal, shown as director in these companies/entities, was an employee director of the company.
- (c) As per letter dated April 26, 2000 written by the company to DSE, Yare Engineering Private Limited, Lunar Finance Limited, Ajay Roadways Private Limited, Castle Builders Private Limited, Rai Chemicals Private Limited, Yare Engineering Private Limited, M/s Echo Chemicals Private Limited were among the other entities acting in concert with promoters for controlling the company.
- (d) The information provided by the company along with its letter dated August 26, 2004, would show that Mr. S.L. Maloo was a director of Lunar Finance Limited from September 02, 1996 to August 02, 1998, from September 30, 1998 to August 31, 2001 and from January 05, 2004 onwards.

37. The mass of evidence (fund transfers/ having common directors/ common address) would establish even otherwise that the entities namely, Lunar Finance Limited , Murliwala Holdings Private Limited, Yashodanandan Investment Private Limited, Chakradhara Holdings Private Limited, Devkinandan Holdings Private Limited, Yare Engineering Private Limited, M/s Teknik Digital Systems Private Limited, Emerald Housing & Constructions Private Limited, Ajay Roadways Private Limited, Castle Builders Private Limited, Rai Chemicals Private Limited, M/s Echo Chemicals Private Limited were all the associate or front companies of Mr. S.L. Maloo. The facts as explained above, leads us to two revelations. One is

the established nexus and the other one is the fund transfers. At this juncture, one has to note the submission of Mr. M.M. Miglani that he traded on behalf of the front entities at the behest of Mr. S.L. Maloo. This submission is corroborated by the submissions of Mr S.L. Maloo himself before SEBI. Thus, it is established, during the period of investigation, that:

- i) M/s Jai Shankar Investment Private Limited executed trades in the shares of the company through Mr. Miglani.
- ii) On certain occasions, admittedly, Mr. Miglani executed trades simultaneously as a buyer and seller to determine the price of the shares of the company, which is against the price discovery mechanism of the stock exchange. Therefore, the trades of Mr. Miglani cannot be said to be genuine.
- iii) Mr. Miglani traded on behalf of certain entities (included in the list of noticees) which were further corroborated by fund transfers that took place as mentioned in the tables at paras 31 and 32. No evidence that will controvert such a finding is available.
- iv) The associates of the company traded in the shares of the company.
- v) Fund transfers amongst the associates of the company
- vi) The trades of the aforesaid entities in the shares of the company accounted for substantial volume in the said shares at BSE and DSE.
- vii) Their trades not only created misleading appearance of trading but also resulted in artificial increase in the share price of the company.

38. The facts established above are sufficient enough for me to conclude that the above mentioned entities *inter alia* indulged in manipulation in the shares of the company. Hon'ble SAT in the matter of Ketan Parekh Vs SEBI had *inter alia* observed: "*When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy /sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the*

buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows there from. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged.” Further, in the said order, Hon’ble SAT observed “*. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. 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.”*

Thus, entities including the company (other than Mr. S.L.Maloo and Rajiv Sharma) mentioned in the show cause notice dated April 23, 2008 have violated the provisions of Regulations 4(a) to 4(d) of FUTP Regulations. The role of Mr. S.L. Maloo and Mr. Rajiv Sharma in the manipulation of the shares of the company is being dealt separately below in this order.

39. As far as the role of Mr. S.L.Maloo is concerned, it is no one's case that

Mr. S.L.Maloo had traded in the shares of the company during the period of investigation. But he is linked to the trades of Mr. M.M. Miglani (self as well as trades on behalf of associates of the company as stated above in this order) as it is alleged that the said trades were executed at the behest of Mr. S.L.Maloo. What remains to be examined is whether Mr. S.L.Maloo had any role in the transactions which ultimately resulted in the manipulation of the shares of the company. It is already established that the trades of Jai Shankar Investment Private Limited/Mr. Miglani, associates of the company resulted in the manipulation of the shares of the company. It is established that *inter alia* there were fund transfers amongst Jai Shankar Investment Private Limited/Mr. Miglani, promoter group/associates of the company during the period of investigation. There is clear evidence of fund transfers amongst the promoter group/associates of the company. Mr. M. M. Miglani, in his written submission (dated July 26, 2004) stated that his trades in the shares of the company were at the behest of Mr. S.L. Maloo. He *inter alia* stated “*At the request of Shri S.L. Malooji and Shri Rajeev Sharma – associated with Shri S.L. Malooji as Auditor and Financial Consultant – the whole process started. As a first step initiation was made to create awareness on the activity of the shares..... After the awareness in the share, there was a good demand for shares. As Shri S.L. Malooji and his associates were not having any account with brokers, I was requested to meet the situation. Sale of shares started. Delivery of shares sold for the settlement were delivered to me or direct to the broker. The delivery targets were adhered to and the payments were made as per their direction..... Then the software boom started. The share was in great demand. The sale was made through me and then accounts were opened with Brokers by them. There was very huge sale and they maintained their sale dates within the specified time directly to the brokers and they recovered the payment directly. At this stage there was less use of my selling.....At the time of demat of shares, for jumbo lots of 25000 shares each in physical form duly transferred in my name were given to me for emergency sale and to meet any exigencies by Shri S.L. Malooji. These shares were later dematerialized and credited to my Demat*

Account with Integrated Master Securities, Alankit Assignments and PNR Securities. There was a sale etc of about 25000 shares and the balance around 75000 shares are with me on their account and I am keeping these shares in trust for Shri S.L. Malooji.... The payments for the shares sold through me were given to entities of Shri S.L. Malooji as per their direction....”

40. Besides, in his statement (on August 7,2004) , Mr. M.M. Miglani also stated *“I traded in the shares of Websity with the intention of off loading the holdings of management in the activated market..... I sold these shares on behalf of Shri S.L. Maloo. He used to give delivery to me which were sold in the market through various brokers..... Further, I did make purchase the shares of Websity on such occasions on the behest of the management..... On certain occasions, especially when the shares went into demat, in order to determine the price at the stock exchanges and also to keep the share price active I used to give buy and sell orders sometimes with say Integrated and counterparty order with N.C. Jain or Delhi Securities Limited..... I used to give the payments for shares sold to Shri S.L. Maloo or any of his nominee.... As far as M/s Teknik Digital Systems Private Limited and M/s Lunar Finance Limited, orders placed with M/s V H Securities and M/s N C Jain is concerned, these orders were placed by me in shares of Websity. However, payments were directly collected by representative of Shri S.L.Maloo from these brokers.”*

41. I cannot disregard the submission made by Mr. Miglani in the facts and circumstances of the case. SEBI has given all the documents relied upon including the submissions/statement of Mr. Miglani to the company and Mr. S.L.Maloo. However, no effort was taken by them to controvert the said submissions. Their main contention was that Mr. Miglani made the statement with malafide intention. However, I am unable to agree with the noticees. Merely stating that the statement of a third person was made with malafide intention is not sufficient enough to discard such statements, in all cases. They could have controverted such submission or explained their case based on the materials

made available to them. I am also not in agreement with the contention of the company that Mr. Miglani had given the statement under threat. Even Mr. Miglani had not taken such plea. I find no reason to disbelieve the submissions made by Mr. Miglani, in which he had explained the role of Mr. S.L. Maloo/promoters/associates of the company in the manipulation of the shares of the company. He had stated that the delivery of shares was given either by Mr. S.L.Maloo or by the associates of the company. Incidentally, Mr. S.L.Maloo has not denied the transactions as such. His case was that the said transactions took place in the normal course of business. In this regard, the following submission made by him is pertinent. In his written submission (dated July 27, 2004), Mr. S.L.Maloo stated ***“As far as I remember, Mr Miglani used to communicate the market demand of the shares of Websity Infosys Ltd. at times to the Companies holding its shares and had liquidated the shares given to him by the said Companies”*** (Bold and underline supplied). This statement has to be read in conjunction with the other findings wherein it is established that fund transfers took place between Mr. Miglani/Jai Shankar Investment Private Limited and the associates of the company during the period of investigation. In the absence of any other evidence to the contrary, it can be reasonably presumed that Mr. Miglani traded in the shares of the company at the behest of Mr. S.L.Maloo. Further, Mr Rajiv Sharma, chartered accountant of the company stated that Mr. S.L.Maloo appointed Mr. Miglani in trading in the shares of the company. There are other reasons to disbelieve the version of Mr. S.L.Maloo. It is an admitted case that four jumbo sets of 25,000 physical shares were dematted out of turn in the name of Mr. Miglani in the month of May 2000. The time of such out of turn demat is very important since it was at this time (May 8, 2000) that trading in electronic form in the shares of the company commenced. It indicates that the company and Mr. S.L. Maloo had given preferential treatment to Mr.Miglani. Admittedly, these shares were later introduced in the securities market by him to jack up the share price of the company. The company also delayed the transfer request of various investors during the said period. Moreover, this was made when number of other prior applications for demat were pending. The out of turn demat of the

shares lodged by Mr.Miglani would reinforce the inference that there was close nexus between Mr.S.L. Maloo and Mr. Miglani. Further, SEBI also found that the company delayed the transfer requests of various investors, the details of which are explained below in this order. This would buttress my findings to the effect that Mr. S.L. Maloo/company had a direct involvement in the entire transactions, which ultimately resulted *inter alia* in the manipulation of the shares of the company.

42. As stated above, there was allegation against the company that it had delayed the transfer of its shares. SEBI received certain complaints pertaining to the non-receipt of shares sent for transfer. Even this happened when the settlement of the trading in the scrip was being conducted compulsorily under the rolling mode and in demat form with effect from May 08, 2000. If an investor failed to receive shares lodged for transfer, he would be deprived of an exit route. Some of the investors such as one Manish Anand and Ratika Agarwal alleged that the shares sold by M/s Lunar Finance Ltd., which was one of the associate company of the company were sent back by the company on the ground of signatures mismatch. This is rather very strange. It is difficult to accept that the shares owned by a group company were returned for the reason of signatures mismatch. Besides, JPT Securities Limited (mentioned in para 5 of this order) complained vide its letter dated April 17, 2000, that the company was withholding transfer of approximately 1,78,000 shares sold by it in the market. JPT Securities Limited stated that prior to that, a bill discounting facility of approximately Rs.45 lakh was granted by it to M/s Lunar Diamonds Limited against which M/s Lunar Finance Limited (associate of the company) stood as guarantor. According to JPT Securities Limited, Lunar Diamonds Limited had failed to repay the amount and therefore, the said Lunar Diamonds Limited had pledged 1,78,000 shares of the company to it. JPT Securities Limited claimed that, it had sold approximately 1.05 lakh shares of the company in the market and the said shares were sent for transfer on December 8,1999. However, the said transfer was not effected for about four months. The company

in its letter dated July 31, 2008 (to SEBI) admitted such delay. According to the company, it had delayed the transfer of shares sold by JPT Industries Limited as it believed that that Lunar Diamonds Limited was a sick company under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. I am unable to accept the contention of the company in this regard. Though the impugned certificates were lodged for transfer in December 1999, no action was taken by the company for almost 5 months despite the intervention of SEBI and DSE in this regard. The shares of the company were validly and legally transferred in favour of JPT Industries Limited by the company on the strength of the transfer deeds duly executed in its favour by Lunar Finance Limited in terms of the guarantee agreements. Once the shares were transferred in favour of JPT Industries Limited, further refusal on subsequent transfers was without any legal justification. I also note that Section 22(3) of the Sick Industrial Companies (Special Provisions) Act, 1985 provides that BIFR may by an order suspend the operations of all rights, privileges, obligations and liabilities accruing or arising before the date of such order. However, in the present case, no evidence has been furnished by the company to establish that such an order was passed by BIFR in the case of Lunar Diamonds Limited. In terms of Section 113 of the Companies Act, 1956 unless prohibited by any provisions of law or of any order of any court, tribunal or other authority, the company shall transfer the shares within two months after the application is made. However, in the case of JPT Industries Limited, admittedly, the company took more than five months even to refuse the transfer. In addition to the above complaint, SEBI also received certain complaints in respect of the delays in transfer. Some of the complaints are specified below:

Name	Date of request letter to company for transfer	Letter to SEBI	Number of shares
DH Shah	24.1.2000	30.5.2000	100
Jagdish Chandar N Singhania	5.7.1997 & 4.9.1997	4.12.2000	300
J Harsha Vardhana	3.6.2000	31.3.2001	300
Rashmi Meharia	21.10.2000	18.12.2001	100
Laxmi/Murli Manohar	11.5.2000	15.2.2002	1100
B Nirmal Kumar Jain	19.5.2000	30.7.2002	8900

43. During the period of investigation, Mr. K K Agarwal, Director of the company and its company secretary Mr. Ashok Arora, stated that the company did not maintain Lodgment Register for transfer requests received prior to April 1, 2000. The pertinent aspect here is that the period of such transfer requests coincides with the period of investigation. This was the period when the shares of the company were to be traded compulsorily in demat form. Thus, the company violated the mandatory provisions of Section 113 of the Companies Act, 1956 read with Regulation 6(c) of the FUTP Regulations. Besides, there were allegations of irregularities by the company in the dematerialization of its shares. I note that, though the company had entered into an agreement with National Securities Depositories Limited (NSDL) and Central Depository Services Limited (CDSL) for dematerialization of shares in March, 2000, on perusal of the information furnished, not even a single share was dematerialized up to May 08, 2000. This was despite the receipt of large number of requests received for demat of shares since March 2000. Some of the complaints in respect of the delay in demat of shares received by SEBI are tabulated below:

Name of investor	DRN date	Date of demat	Number of shares
Nirmal Bhatia/ NK Bhatia	29/03/2000	11/05/2000	100
PRL Lakshmanan	08/04/2000	17/05/2000	100
Shyam Sunder Sarawagi	12/04/2000	11/05/2000	200
Shailaja Vasant Deshpande	19/04/2000	29/08/2000	400

44. Besides, there was allegation about the demat of the shares of the company. It is pertinent to note that Mr. M.M. Miglani had lodged 25,000 shares for demat on May 10, 2000 i.e. the date on which DRN number was generated and the same were dematerialized on May 11, 2000 itself although there were large number of requests pending from the investors who had lodged their shares earlier to him. The details of such complaints are mentioned below:

Name of investor	DRN date	Date of demat	Number of shares
Meena Sethi	20/04/2000	17/05/2000	500
Brijendra Jain	08/05/2000	03/06/2000	1500
Gaurav Arora	05/05/2000	03/06/2000	2000
Chandrakant Mulchand Shah	09/05/2000	03/06/2000	10000

45. Apparently, the company had given preferential treatment to Mr. M.M. Miglani in the demat of shares. In fact, these shares were later introduced in the market by him (as stated in preceding paras of this order) to jack up the share price of the company. Mr. Miglani had also admitted that he did not own these shares and at the behest of the management, shares were transferred in his name and later dematerialized. However, perusal of the share transfer records furnished by the company to SEBI does not show any transfer of shares in the folio no. 16443 and bearing distinctive number of 8238501-8263500. (The details of which were obtained from the Depository Participant (DP) of Mr. Miglani). This also shows the fact that records given and shown to SEBI by the company were not complete or correct about transfers made. This would further brace the inference that the management of the company had intentionally, (1) initially delayed the transfer of as many shares as possible (2) even after entering into agreement with NSDL/CDSL it did not dematerialize shares for around 2 months till it went into compulsory demat trading mode and (3) done out of turn demat for front person Mr. Miglani for manipulation of share price. These deliberate actions resulted in artificial shortage of shares in the market. Ultimately it caused the increase in the share price from Rs.27.50/- on May 8, 2000 to Rs.52.50/- on May 26, 2000. Such intentional delay in transfer and demat of shares lead to reduction of floating stock and consequently the share price increased. This is clearly in violation of Regulation 6(c) of the FUTP Regulations.

46 Besides, the Committee constituted by DSE under the Chairmanship of

Justice Mr. N.N. Goswami (Retd.) observed various irregularities committed by the company in and around the period of investigation of SEBI. While finalising the report, the Committee had also taken into account the submissions of the company. Pursuant to the receipt of the Committee Report, DSE in its meeting dated May 27, 2000, decided to suspend the trading in the scrip of the company. The said Report indicated various irregularities committed by the company. In terms of the said Report, the company had issued two sets of share certificates bearing the same distinctive numbers. An illustrative list of such cases is as under:

- a. As per the information given by the company to DSE, certificate no. 9823 bearing distinctive numbers 1879701 - 800 has been transferred to Lunar Finance Ltd. (folio No. 10238). The said transfer was effected vide transfer no. 95001606. However, the information given by the company relating to its shareholders shows that the certificate no. 9823 has been issued in the name of Emerald Housing & Construction Pvt. Ltd., but these certificate bear distinctive nos. 17470351 to 450. Whereas, the share certificates lying in custody of DSE shows that certificate no. 9823 bearing distinctive numbers 1879701 - 800 has been issued in the name of Castle Builders Pvt. Ltd.
- b. As per the information given by the company to DSE, certificate no. 988 bearing distinctive numbers 98701 - 800, whose holder name was JPT Securities Ltd. It appears that the said shares were cancelled and new certificate no. 35717 was issued. However, as per the information given by the company, certificate no. 988 bearing distinctive numbers 3112401 - 500 have been issued in the name of Sarita Singh. Whereas, the share certificates in custody of DSE shows that certificate no. 988 bearing distinctive numbers 98701-800 has been issued in the name of Castle Builders Pvt. Ltd.

- c. As per the information given by the company to DSE, certificate no. 976 bearing distinctive numbers 97501 - 600, whose holder name was JPT Securities Ltd. It appears that the said shares were cancelled and new certificate no. 35705 was issued. However, as per the information given by the company, certificate no. 976 bearing distinctive numbers 3111201 - 300 was issued in the name of Y.C. Ghai (vide transfer no. 1888). Whereas, the share certificates lying in custody of DSE shows that certificate no. 976 bearing distinctive numbers 97501 - 600 has been issued in the name of Castle Builders Pvt. Ltd.
- d. As per the information given by the company to DSE, certificate no. 998 bearing distinctive numbers 99701 - 800, whose holder name was JPT Securities Ltd. It appears that the said shares were cancelled and new certificate no. 35727 was issued. However, as per the information given by the company, certificate no. 998 bearing distinctive numbers 3113401-500 was issued in the name of Raj Kalra (vide transfer no. 145). Whereas, the share certificates lying in custody of DSE shows that certificate no. 998 bearing distinctive numbers 99701 - 800 has been issued in the name of Castle Builders Pvt. Ltd.
47. DSE has informed that these share certificates along with transfer deeds issued in the name of Castle Builders Pvt. Ltd. and Lunar Finance Ltd. are kept with the exchange since 1996. DSE has informed that, part of the said shares was delivered by Lunar Finance Ltd. to Sino Securities Ltd. (Member, DSE) for onward delivery to M/s Munjal Investment, Member DSE. However, due to apprehension of default by M/s Munjal Investment, these shares were kept with DSE since 1996. This has been admitted by Sino Securities in its letter to DSE. Duly certified extracts of the DSE report on the issue of duplicate share certificates bearing the same numbers were provided by DSE to SEBI. In addition to this, the share certificates and transfer deeds referred by the DSE above have been obtained in original by SEBI. It is noted that the company had

subsequently refused transfer of shares in many cases on the ground that Castle Builders Pvt. Ltd. and Lunar Finance Ltd. had lodged a police complaint on September 30, 1998 for loss of around 16.70 lakh shares of the company. Since Castle Builders Pvt. Ltd. and Lunar Finance Ltd. belong to the promoter as that of the company, it implies therefore that they knew about the alleged loss of shares in September 1998. That being so, it is pertinent to look into the following :

(a) Why was this not raised by the company in objection memos (given to transferee for rejecting request for transfer of shares) which were issued prior to January 2000. In this regard, I note that DSE has reported that the objection memo issued by the company from January 2000 onwards stated that the signature of the transferor on the transfer deed was forged. The company had cancelled such share certificates and

(b) Why did the company allow transfer of these shares in September 1999, after DSE took up the matter with the company.

48. In respect of this allegation in the show cause notice, the company vide its letter dated July 31, 2008 *inter alia* stated that there were approximately 50,000 shares where duplicate share certificates were issued due to jump in the printer/computer/software error. It also added that barring approximately 10,000 of the said shares, the remaining were taken back within 3 months by the company. This reply of the company is not acceptable. The company also did not provide any evidence to the effect that it had informed stock exchanges/its shareholders/public regarding issuance of duplicate shares. It is questionable on the part of Lunar Finance Ltd., which had delivered shares of the company to a DSE member in 1996 to later allege in 1998 that shares have been lost. The issuance of another set of share certificate by the company, when the original share certificates are with other persons, clearly shows a fraudulent intent. The height of this was the brazenness with which the company refused transfer of shares sent by unsuspecting investors who had purchased these shares from the

market. Clearly, the company acting in nexus with its group companies namely Lunar Finance Ltd. & Castle Builders P Ltd. had indulged in fraud on its investors. The contention of the company is clearly an afterthought. From the Report (Goswami Committee) of DSE, it has been further revealed that the company had forfeited 1.66 crores equity shares (constituting 66% of the total issued capital) on September 8, 1998 and reissued the same to persons of their choice on February 27, 1999, in clear violation of Clause 23 of Listing Agreement. Further, the company did not seek approval of DSE for reissue of the forfeited shares. DSE informed that as per Article 24 of Articles of Association of the company, it is required to give 30 days notice before forfeiture of shares. The company had issued final notice on August 5, 1998 and allowed time till August 16, 1998 i.e. 11 days to shareholders. The company has furnished an UPC stamping from postal authorities confirming the dispatch on August 16, 1998. However, the said date was Sunday and the post-office would have obviously closed. A closer look at the stamping on the UPC list shows that date as August 26, 1998. It indicates that the final notice for forfeiture was dispatched (if at all it has been dispatched) much after the due date for payment. DSE had also observed that the shares forfeited included those allotted to promoter group entities. DSE had further observed that over 70 applicants to whom the shares were reissued also figure in the list of shareholders whose shares were forfeited. The company had clearly defrauded general investors by acting in nexus with its associates who had failed to pay amount due to company. Subsequently, their shares were forfeited and reissued fully paid shares at Rs. 5/- each. In this manner, the company had ensured that its associate did not pay the premium of Rs. 25/- per share, which was realized from general investors at the time of public issue. In respect of this allegation in the show cause notice, the company vide its letter dated July 31, 2008 inter-alia stated the Listing agreement did not require any specific approval from DSE for reissue of shares. The company had informed DSE about the decision of its Board taken on March 27, 1999 regarding reissue of shares, which were earlier forfeited. It was also stated that prior to notice dated August 05, 1998, there were two notices dated September 30, 1996

and August 17, 1996. It was also stated that any irregularity in dispatch of notice would not invalidate the forfeiture and reissue of equity shares by the company. The company however did not respond to other issues like reason why shares of allotted to promoter group entities were forfeited, why entities whose shares were forfeited were reissued at Rs. 5/- each.

49. In terms of Clause 23 of the Listing agreement "*The company agrees (a) to issue or offer in the first instance all shares (including forfeited shares, unless the Exchange otherwise agrees) securities, rights, privileges and benefits to subscribe to pro rata to the equity shareholders of the Company unless the shareholders in the general meeting decides otherwise.----*" It clearly shows that forfeited shares cannot be reissued without the approval of the exchange. In view of the above, I do not agree with the contention of the company that approval of exchange is not required for reissue of shares. Also, by not ensuring proper dispatch, the final notice issued to shareholders by the company loses its credibility, which in turn makes the forfeiture a questionable act. Clearly, forfeiture was an act to defraud general investors of their shares and also benefit those investors who are linked to promoters. This is a fraudulent act by the company. I also note from the said report of DSE (Goswami Committee), that some share certificates available with DSE (issued in name of Castle Builders P. Ltd.) indicate "*Issued in lieu of old share certificate sub-divide/ replaced/on consolidation of shares*". Clearly, these certificates do not mention the old share certificate number. This is clearly in violation of Companies (Issue of Share Certificate) Rules, 1960. As per said Rules, any certificate issued in exchange for those which are sub-divided or consolidated or replacement of those which are defaced, torn, it should be stated on the face of the new certificate that is "*issued in lieu of share certificate No.----- sub-divided/ replaced/ on consolidation of shares.*" Clearly, the company had split share certificates in violation of said Rules. In respect of this allegation, the company vide its letter dated July 31, 2008 *inter alia* stated that failure was unintentional and reiterated that duplicate shares were issued as a result of printer/ computer/ software error. I am unable

to accept such plea. The contention of company and its group companies namely Lunar Finance Ltd. & Castle Builders Pvt. Ltd. regarding alleged loss of shares in September 1998 is evidently unacceptable. The failure to disclose the old share certificate numbers is an intentional act by the company as it facilitates issuance of duplicate share certificates without any trail. Clearly the company had indulged in fraud on investors and had also falsified its records. The fraud committed by the company is clearly in violation of Regulation 3, 6(a) and 6(d) of the FUTP Regulations.

50. Besides, the investigation by SEBI found that Mr. Rajiv Sharma, proprietor of M/s Rajiv Prakash & Co., Chartered Accountants, auditor of the company and its group companies introduced Mr. M.M. Miglani to Mr. S.L.Maloo at his office. It was alleged that deliveries for shares sold by Mr. Miglani were mostly given to him by Mr. Rajiv Sharma. Besides, perusal of the bank account of Mr. Miglani shows many payments made to Mr. Rajiv Sharma. Some of such details are as below:-

- Cheque no. 860023 dated November 3, 1999 of Rs.2,50,000/- issued by Mr. Miglani.
- Cheque no. 639283 dated December 17, 1999 of Rs.2,00,000/- issued by Jai Shankar Investment P Ltd.
- Cheque no.129604 dated April 19, 2000 of Rs.4,00,000/- issued by Mr. Miglani

51. Further, Mr. Rakesh Kumar Jain, director of M/s NCJ Share & Stock brokers Ltd., member BSE stated that Mr. Rajiv Sharma along with Mr. Sunil Agarwal and Mr. M.M. Miglani used to visit his office for delivery of shares and collection of payment. Mr. Rajiv Sharma, in his statement to SEBI (on August 18, 2004) admitted that he had introduced Mr. Miglani to Mr. S.L.Maloo in 1991. Mr. Rajiv Sharma stated that Mr. Miglani *was given a verbal assignment for creating awareness in the shares of the company.This was done as the shares was*

hardly traded in the stock exchange. When, SEBI sought the reasons for appointment of Mr. Miglani for creation of awareness in shares of the company, he stated that it was purely due to fact that Mr. Miglani was known to Mr. S.L. Maloo for the last many years. To a specific question about the appointment of Mr. Miglani for dealing in the shares of the company, Mr Rajiv Sharma stated that Mr. Miglani was appointed by Mr. S.L.Maloo. Mr. Rajiv Sharma admitted that Mr. Miglani was using his office cabin at 1102, Tolstoy House, Tolstoy Marg, New Delhi for around 2-3 weeks before May 2000. Mr Rajiv Sharma even admitted that he had visited offices of M/s Integrated Master Securities and M/s NCJ Share & Stock Brokers Ltd. (formerly M/s NC Jain), members of BSE along with Mr. Miglani for introducing Mr. Miglani to the said stock brokers. These issues were taken up in the show cause notice issued to Mr. Rajiv Sharma, who in his reply dated May 05, 2008 and subsequent submissions before me merely denied the observations of SEBI. However, he confirmed with his statement given to SEBI on August 18, 2004. No evidence was provided by Mr. Rajiv Sharma in support of his denial. I note from the bank account that he had received funds from Mr. Miglani from the proceeds of shares sold by the latter. It was also contended that Mr. Miglani was given a verbal assignment for creating awareness in the shares of the company. It was also admitted that he along with Mr. M. M Miglani had visited the premises of brokers for introduction. This clearly leads to the inference that Mr Rajiv Sharma had acted in nexus with Mr. SL Maloo and Mr. M.M. Miglani. Further, Mr Rajiv Sharma were not able to explain the reasons for payments by Mr. M.M. Miglani to him. Apparently, Mr Rajiv Sharma had not acted merely as an auditor of the company and its other group entities, as was contended by him. Clearly, Mr Rajiv Sharma were acting in nexus with Mr. S.L Maloo and Mr. M. M. Miglani and thus aiding and abetting in the rigging and creation of artificial market by Mr. MM Miglani in violation of Regulation 4(a), 4(b), 4(c) and 4(d) of the FUTP Regulations.

52. Manipulation in shares is a deceptive conduct designed to deceive or defraud gullible investors by controlling the share movement or artificially

affecting the price of securities. The manipulator misleads the innocent investor by masking the true value of the stock. A manipulator may artificially cause a price increase either by reducing the supply or increasing the demand. The standard of proof required in a proceeding of this nature is at variance with the standard of proof required in other legal matters say as in criminal cases. It is sufficient if the preponderance of probabilities establishes the involvement of the person against whom the charges are made. Proof beyond reasonable doubt is not the dictum applicable to a proceeding of this nature. Proof of manipulation always depends on various factors such as trading data, payment details, connection amongst the parties, reduction in floating stock etc. All these put together emerge as ingredients in a manipulative scheme. In this connection it is relevant to note Hon'ble Supreme Courts decision in Collector of Customs Vs. D. Bhoormull (AIR 1974 SC 859), wherein it was held that:".....*The prosecution or the department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and-as Prof. Brett felicitously puts it - "all exactness is a fake". El Dorado of absolute proof being unattainable, the law, accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.....Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden*".

53. In the present case, the typical ingredients which are necessary to prove manipulation are obvious. On perusal, it can be seen that the company including its managing director/ promoter group/ associates, its auditor and a front entity were behind the manipulations. By virtue of the carefully coordinated artifice that has been outlined in the preceding paragraphs, they could control the movement

of shares of the company. All of them have variously played their role in this design. The company by allotting shares to its promoter group (by way of preferential basis) reduced the public shareholding substantially. Majority of the trades in the shares of the company during the period of investigation at BSE and DSE were executed either by the associates of the company or by a front entity (Mr. Miglani). The associates of the company also executed trades directly. It created misleading appearance of trading in the shares of the company and artificially increased the share price of the company. The shares were traded amongst themselves. Mr. Miglani also executed trades to determine the share price. The company's auditor had also played his part. He admittedly, introduced Mr. Miglani to various stock brokers. The company had also tried to reduce the floating stock of the public by delaying the share transfer requests and demat requests. It also allotted Mr. Miglani 1,00,000 shares in demat (out of turn) when various other requests for such transfer were pending. It was at this time, the shares of the company began to be traded in the compulsory demat trading form. The above discussions clearly indicate that the trades during the period of investigation *inter alia* created misleading appearance of trading and further induced the sale or purchase of securities by gullible investors. Obviously, the trades of the entities connected to the company were not genuine. Besides, the trades resulted in artificial fluctuations in the share price. Since it is exceedingly difficult to prove facts which are solely within the personal knowledge of parties concerned, the legal proof in such circumstances should reflect a prudent man's estimate as to the probabilities of wrongdoing in the case. It is significant to note that all the entities have participated in the share transactions in the company at different stages in what evidently emerges as a well woven plot. In the instant case, the sequence of events overlaid on the conduct of all the entities indicates the existence of close connection between the parties for the purpose of manipulation of shares. The standard relevant in such a case is not proof beyond reasonable doubt but the preponderance of probabilities that allow an inference that the fact must be more than probable. In this regard, it is also relevant to note the observation of Hon'ble Securities Appellate Tribunal (SAT) in the matter of

Ketan Parekh Vs SEBI, wherein it was held that: “... .. . *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... ..*” A collective view of the aforesaid findings, therefore, draws me to the conclusion regarding the complicity of the company, Mr. S.L. Maloo, his front entities and the promoter group entities of the company (including their directors) in the market manipulation indulged through Mr. Miglani. It is borne out from the above discussion that the noticees are linked to the company and its promoter director, Mr. S.L. Maloo. During the course of investigation, SEBI vide letter dated August 19, 2004 had sought to know from Mr. S.L. Maloo whether his company/group companies had any association/financial dealings with Murliwala Holdings Pvt. Ltd., Chakradhara Holdings Pvt. Ltd., Yashodanandan Investment Pvt. Ltd., Devkinandan Holdings Pvt. Ltd., Teknik Digital Systems Pvt. Ltd. and Sunraj Software Pvt. Ltd. In reply thereto, the company vide letter dated August 26, 2004 informed SEBI that their group companies have no financial dealings with the said entities. Given the facts as established above, this submission of the company is found to be false and misleading which would clearly indicate that the company was intending to misguide the process of investigation by SEBI. The above established facts are sufficient enough for me to conclude that all the noticees including its directors (who were responsible for the activities of the respective noticees) violated the provisions of the FUTP Regulations, Companies Act, 1956 as stated in the show cause notice dated April 23, 2008. Further, Hon’ble SAT, vide order dated December 17, 2008 in a similar matter in Gaurav Shah Vs Whole Time Member, SEBI *inter alia* observed “*When the promoters of a company through their own front entities start manipulating their own scrip, the charge is more serious and those who act in concert with them are equally responsible*”

54. Based on the above, I find that the following entities have violated the provisions of Regulations 6(1), 6(3), 7(1), 7(2) and 11 (1) of Securities and

Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as stated in the show cause notice dated September 19, 2000.

Sr. No.	Name of the entity	Address
1	Luxury Foams Limited,	D-15/4, Okhla Industrial area Phase I, New Delhi-110020
2	Echo Chemicals Private Limited	D-15/4, Okhla Industrial area Phase I, New Delhi-110020
3	Yare Engineering Private Limited	D-15/4, Okhla Industrial area Phase I, New Delhi-110020
4	TMS Boards & Industries Private Limited	C/o Sunrise Polycon, Danka Imli, Gai Ghat, Patna -800007
5	Cookfast Foods Private Limited	C/o Sunrise Polycon, Danka Imli, Gai Ghat, Patna -800007
6	Econo Commercial Evaluators Private Limited,	C-150, Maurya Lok, Dak Bunglow Road, Patna - 800007
7	Ajay Roadways Private Limited	Shop No. 6, pallavi Apartment, Nala Road, Patna - 800003
8	Castle Builders Private Limited	Shop No. 6, pallavi Apartment, Nala Road, Patna - 800003
9	Dilli Soaps & Chemicals Private Limited	C/o Sunrise Polycon, Danka Imli, Gai Ghat, Patna -800007
10	Rai Commercial Private Limited	C/o Sunrise Polycon, Danka Imli, Gai Ghat, Patna -800007
11	CMC Marketing Private Limited	C-150, Maurya Lok, Dak Bunglow Road, Patna - 800007

55. Further, the company namely, Websity Infosys Limited having its address at B-218, Ground Floor, Lajpat Nagar, Part- I, New Delhi (Formerly at D-15/4, Okhla Industrial area Phase I, New Delhi-110020) violated Regulations 6(2), 6(4) and 7(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

56. In view of the foregoing, I, in exercise of the powers conferred on me in terms of Section 19 read with Section 11B of the Securities and Exchange Board of India Act, 1992 and read with Regulation 44 and 45 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 prohibit the entities (mentioned at para 54 above) from buying, selling or dealing in securities in any manner either directly or indirectly for a period of five years. Since, Websity Infosys Limited (mentioned at para 54 above) is also found guilty of violation of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, the prohibition imposed on the said company is being dealt with in the following paragraph of this order.

57. Further, as discussed above, I find the following entities and persons have violated the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, as stated in the respective show cause notice dated April 23, 2008:

Sr. No.	Name of the entity	Address	Directors
1	Websity Infosys Limited	B-218, Ground Floor, Lajpat Nagar, Part- I, New Delhi (Formerly at D-15/4, Okhla Industrial	Mr. S.L. Maloo, Mr. R.K. Agarwal, Mr. M. C. Maloo, Mr. S. C. Sethia, Mr. K. K.

		area Phase I, New Delhi-110020)	Agarwal, Mr. Sunil Agarwal, Mr. D.D. Manger and Mr. Ashutosh Sharma,
2	Lunar Finance Limited	D-15/4, Okhla Industrial area Phase I, New Delhi- 110020	Mr. S. L. Maloo and Mr. Sunil Agarwal,
3	Yare Engineering Private Limited	15 A/38, WEA, Karol Bag, New Delhi	Mr. Digambar Mandal, Mr M. C. Chhajer and Mr. Sunil Agarwal,
4	Yashodanandan Investment Private Limited,	73, Vijay Block, 3 rd Floor, Laxmi Nagar, Vikas Marg, New Delhi	
5	Chakradhara Holdings Private Limited,	73, Vijay Block, 3 rd Floor, Laxmi Nagar, Vikas Marg, New Delhi	Mr. Sunil Agarwal and Mr. Jaswant Saini,
6	Devkinandan Holdings Private Limited	15 A/38, WEA, Karol Bag, New Delhi	Mr. Sunil Agarwal and Mr. Jaswant Saini,
7	Murliwala Holdings Private Limited	15 A/38, WEA, Karol Bag, New Delhi	Mr. Sunil Agarwal and Mr. Jaswant Saini,
8	Sunraj Software Private Limited	S-453, GK-II, New Delhi	-

9	Echo Chemicals Private Limited	A-81, Okhla Industrial Area, Phase II, New Delhi	Mr S.C. Sethia, Mr. M. C. Chhajjer and Mr. Sunil Agarwal,
10	Emerald Housing & Constructions Private Limited	15 A/38, WEA, Karol Bag, New Delhi	
11	Teknik Digital Systems Private Limited,	73, Vijay Block, 3 rd Floor, Laxmi Nagar, Vikas Marg, New Delhi	
12	M/s. Jai Shankar Investment Private Limited	44, DSIDC Comple, Mata Sundri Road, New Delhi	Mr. M.M. Miglani
13	Mr. Rajiv Sharma	M/s Rajiv Sharma & Co, Chartered Accountants, E-133, Greater Kailash , Part I, New Delhi.	

58. In view of the foregoing, I, in exercise of the powers conferred on me in terms of Section 19 read with Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 prohibit the entities (Serial No. 1 to 12 at para 57 except the company at serial no. 3) including the directors from buying, selling or dealing in securities in any manner either directly or indirectly for a period of five years. As I have already prohibited Yare Engineering Private Limited from buying, selling or dealing in securities in any manner either directly or indirectly for a period of five years as stated in para 56, I do not deem it necessary to impose a further prohibition in respect of the violations of the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, though it is

found guilty of violating the provisions of the said Regulations. As regards Mr. Rajiv Sharma, Chartered Accountant, given his involvement in the fraudulent transactions, I prohibit him from buying, selling or dealing in securities in any manner either directly or indirectly for a period of one year.

59. This order will come into force with immediate effect.

K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: December 31, 2008