

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER

DIRECTIONS UNDER SECTION 11B OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATIONS 11 AND 13 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 IN THE MATTER OF STOCKNET INTERNATIONAL LIMITED AND ITS DIRECTORS, MR. ASHUTOSH BAJPAYE, MR. SAUMIL PATEL AND MR. SANJEEV AGARWAL

Date of hearing: May 08, 2009

Appearances:

For Stocknet International Limited,}	Mr. Aditya Bhansali, Consultant, Mindspright Consultants
Mr. Ashutosh Bajpaye,	} Mrs. Akshaya Bhansali, Advocate, Mindspright Legal
Mr. Saumil Patel and	}
Mr. Sanjeev Agarwal	}

For the Securities and Exchange Board of India: Mrs. Barnali Mukherjee, General Manager
Mr. Chetan Fumakiya, Manager
Mr. T. Vinay Rajneesh, Legal Officer

1. On noticing abnormal spurt in the traded volumes and share price of Stocknet International Limited (hereinafter referred to as the company), the Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation into the buying, selling and other dealings in the shares of the said company for the period between April 30, 2001 and August 03, 2001 at Bombay Stock Exchange Limited (hereinafter referred to as BSE), where the shares of the company were traded. It was noticed that during the period between April 30, 2001 and May 25, 2001, there was no trading in the shares of the company. The shares of the company were actively traded during

the period between May 31, 2001 and July 13, 2001, when the share price increased from Rs.45.10/- to Rs.104.40/-. Thereafter, the share price fell to Rs.83.85 as on August 01, 2001. It was also observed that large quantity orders were placed by a few major buyers and sellers, and the trades were executed among themselves.

2. The investigation conducted by SEBI revealed that the company had made an announcement on July 05, 2001 that it had entered into a strategic tie up with a company based in United States of America viz. Artilligence Inc. The announcement also mentioned that the said joint venture would enable the two companies to combine forces in the fields of optical networking, software development, consultancy and software products. The announcement about the said strategic tie-up also appeared in the Business Standard (editions dated June 25, 2001 and July 6, 2001). Subsequent to the said announcement, it was noticed that there was an increase in the traded volumes and share price of the company at BSE. It was also noticed that the company declared interim dividend of 20% on July 19, 2001 (during Settlement No. 17/01-02 – period between July 16, 2001 to July 20, 2001) which was subsequently withdrawn on September 07, 2001. The investigation also noticed a rise in the traded volumes subsequent to the announcement of the interim dividend. The investigation found that a group of clients and stock brokers who had dealt in the shares of the company during the relevant period were connected with each other. It was observed that there was an effort to attract investor interest by the announcements (as stated above) made by the company and artificial volumes that were created by certain related entities. The company had also failed to comply with the summons issued by SEBI. In view of the above, it was alleged that the company and its directors, Mr. Saumil Patel, Mr. Sanjeev Agarwal and Mr. Ashutosh Bajpaye had issued misleading price sensitive statements/announcements/statements which had misled the investors, thereby contravening the provisions of Regulations 5(1)(a) & (b) and 6(a) 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 PFUTP Regulations). The company and its directors, Mr. Saumil Patel, Mr. Sanjeev Agarwal and Mr. Ashutosh Bajpaye are hereinafter collectively referred to as the noticees and individually by their respective names, for ease of reference.

3. Thereafter, show cause notices dated December 31, 2007 were issued to the noticees in respect of the alleged violations as stated above and requiring them to show cause as to why actions under Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the PFUTP Regulations should not be taken against them. The show cause notices advised the noticees to give their explanation within fifteen days from the date of receipt of the same. Thereafter, the noticees vide separate letters dated January 28, 2008 requested the extension of time by four weeks for filing their replies to the show cause notices. As no replies were received from the noticees even after affording them sufficient time, SEBI vide letters dated September 05, 2008 reminded the noticees to file their replies by September 12, 2008. The company vide letter dated September 20, 2008 stated that its staff were busy in filing of returns and it wanted to consult its legal advisors and therefore requested that the time for filing its reply be extended by another four weeks. Similar requests for extension of time were also received from Mr. Sanjeev Agarwal, Mr. Ashutosh Bajpaye and Mr. Saumil Patel, vide their letters dated October 06, 2008, October 05, 2008 and September 30, 2008, respectively. When the replies were still not received, the noticees were summoned for a personal hearing scheduled before me on December 19, 2008. Thereafter, letters dated December 16, 2008 were received from the noticees, requesting adjournment of the hearing and assuring that they would file their replies by December 19, 2008. The hearing was therefore rescheduled to February 20, 2009, which was again postponed to April 17, 2009. Finally, the hearing was fixed on May 08,

2009 when the noticees represented by Mr. Aditya Bhansali and Mrs. Akshaya Bhansali appeared before me and reiterated the submissions made by the noticees, vide their separate replies dated May 05, 2009. Further, written submissions dated June 04, 2009 was also filed by the company for the purposes of clarifying certain issues raised during the personal hearing.

4. I have considered the show cause notices issued to the noticees in the matter, the replies filed by them, the oral submissions made by the authorised representatives on behalf of the noticees, written submissions filed by the company and other material on record. The charge against the noticees as mentioned in the show cause notices was that the company and its directors, Mr. Saumil Patel, Mr. Sanjeev Agarwal and Mr. Ashutosh Bajpaye issued misleading price sensitive statements and announcements, thereby violating Regulations 5(1) (a) & (b) and 6(a) of the PFUTP Regulations. Thus, the issue to be determined in the present case would be to find out whether the company and its directors had issued statements/announcements which were misleading the investors and in contravention of the provisions of the PFUTP Regulations. I note that the show cause notices issued to the noticees mentions two such instances where the company and its directors had allegedly made misleading announcements. The alleged misleading announcements were:

- a. Announcement on July 05, 2001 that the company had entered into a strategic tie up with a company viz. Artilligence Inc (based in United States of America) and that the joint venture between the said two companies would enable them to combine forces in the fields of optical networking, software development etc., and
- b. Declaration of interim dividend of 20% on July 19, 2001 and withdrawing the same on September 07, 2001.

5. In respect of the announcement made by the company regarding the strategic tie-up with Artilligence Inc., I find that the company had on July 05, 2001 declared to BSE that Artilligence Inc., part of a \$ 500 million global conglomerate has entered into a strategic tie up with the company and that the joint venture between the two companies would enable them to combine forces in the fields of optical networking, software development, consultancy and software products. The said announcement also appeared in the Business Standard (in editions dated June 25, 2001 and July 6, 2001) Newspaper. In order to support the claim of the company regarding the tie up with Artilligence Inc., a copy of the Memorandum of Understanding (MoU) dated July 02, 2001 entered into between the parties was submitted during the personal hearing. In terms of the said MoU, *"Artilligence and Stocknet after detailed discussions, deliberations are desirous of entering into a strategic and exclusive tie up as joint ventures which will enable both the companies to combine forces in the fields of Optical Networking, Software development, consultancy and software products."* The noticees claimed that in compliance with the requirement of Clause 36 of the Listing Agreement, the company was required to inform the stock exchange of any price sensitive information which had a bearing on the operations/performance of the company. The company further stated that Artilligence Inc. vide its letter dated July 7, 2001, had confirmed that it would remit a sum of \$55.00 million (Rs.236 lakh approx) which has to be treated as an advance pending execution of the final agreement. The company further stated that, Artilligence Inc. vide letter dated August 31, 2001 had insisted on execution of a final MoU complete in all respects before making any remittance towards the implementation of the MoU dated July 02, 2001. It was further submitted that Artilligence Inc., vide letter dated December 24, 2001 wrote to the company that they were willing to execute the final agreement on February 13, 2002 and requested whether the said date was convenient for the company for the execution of the final agreement. The company, in reply, had confirmed that the final agreement could be executed on February 13, 2002 and

requested Artilligence Inc. to depute its representative to execute the agreement. The company stated that it had convened a board meeting on February 13, 2002 for approving the final MoU and submitted that the final MoU could not be culminated due to difference in opinion between the parties. The company produced copies of the correspondence that were exchanged between itself and Artilligence Inc. In this connection, I note that the MoU dated July 02, 2001 entered into by the company with Artilligence Inc. does not contain any clause regarding the payment of Rs.236 lakh pending the execution of the final MoU. Also, in terms of the said MoU, it was clearly mentioned that it was a preliminary agreement on 'technical' aspects and an elaborate memorandum shall be entered into other aspects such as financial, administrative, and marketing in due course. Thus, the company had made the announcement even before the deal with Artilligence Inc had fructified. Another fact which would go against the company is that, the information regarding the joint venture between the company and Artilligence Inc was also published in the Business Standard in its edition dated June 25, 2001, which was done even before signing the preliminary MoU with Artilligence Inc. All these facts would lead to the only logical inference that the company had published the news of the 'joint venture' even before the same was finalised. The act of the company in advertising the "joint venture" in the newspaper even before the signing of the preliminary MoU and informing BSE of an agreement which was still at a nascent stage would make the company liable for making misleading statements. Such statements have the potential to impact the trading in the shares of the company in the market as they are 'price sensitive' announcements.

6. The second price sensitive announcement was the declaration of interim dividend of 20% on July 19, 2001 and later withdrawing the same on September 07, 2001. In this regard, I note that the company submitted that only on receipt of the confirmation from Artilligence Inc. that they would remit the

advance payment, had the management of the company decided to distribute the benefit to its shareholders. The company further submitted that the decision to declare interim dividend was a decision based on strong footing of the company's favourable growth plans after the tie up with Artilligence Inc. The company further submitted that due to the difference in opinion between the parties, the final MoU could not be signed and on September 07, 2001 it withdrew the interim dividend, so declared. According to the company, the interim dividend proposal was withdrawn by its Board of Directors in their meeting held on August 31, 2001 and the same was intimated to the stock exchange on September 07, 2001. In this regard, the relevant provisions of the Companies Act, 1956 relating to 'dividend' needs to be referred to:

Section 2 (14A) of the Companies Act, 1956 defines 'dividend' as follows **"dividend" includes any interim dividend;**

"Section 205 - Dividend to be paid only out of profits

[205. Dividend to be paid only out of profits

(1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government :

.....

[(1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.

(1B) The amount of dividend including interim dividend so deposited under sub-section (1A) shall be used for payment of interim dividend.

(1C) The provisions contained in sections 205, 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to any interim dividend.]

.....”

"207. Penalty for failure to distribute dividends within thirty days

[207. Penalty for failure to distribute dividends within thirty days

Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within thirty days from the date of declaration, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:

....."

7. In terms of Section 2(14A) of the Companies Act, 1956, 'Dividend' includes interim dividend. Further, as per Section 205 (1) of the said Act, dividend is to be paid only out of profits and no dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at to be calculated as per the other sub-sections of Section 205. According to Section 205(1C), the provisions contained in Sections 205, 205A, 206, 206A and Section 207 of the Companies Act, 1956 shall, as far as may be, also apply to any interim dividend. Further, in terms of Section 205 (1A), the board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend. Section 207 provides for penalty for non-payment of the dividend within 30 days from the date of declaration. The unpaid dividend also attracts interest for the period such default continues. Thus, the interim dividend once declared and not paid will make the company a 'debtor' to its shareholders to whom such dividend was declared. In the present case, the company has submitted that the decision of declaration of interim dividend was a decision based on strong footing of the company's favourable growth plans after the tie up with Artilligence Inc. I observe that the company planned to declare the interim dividend out of the amount which was proposed to be received in respect of the strategic tie-up. Herein is a case, where the interim dividend was declared not

from the profits made by the company in the respective year, as mandated under the provisions of the Companies Act, 1956. Further, the company has not deposited the dividend amount in a separate bank account within 5 days from the date the declaration, as required under Section 205(1A), which makes it amply clear that the company had no intention of fulfilling the payment of the interim dividend. Thus, the declaration of interim dividend made by the company not from the profits made by the company in that year would make the company liable for making an announcement which is not in compliance with the relevant provisions of the Companies Act, 1956, in that regard. Further, the company has also withdrawn the interim dividend (declared on July 19, 2001) so declared and the same was communicated to the stock exchange (BSE) on September 07, 2001. Declaration of dividend (including interim dividend) by a company would be a “price sensitive” information to the market at large, which would impact the trading in the securities of a company in the market. Therefore, I find the company liable for making such a declaration without any intention of fulfilling the same.

8. The next step would be to find the impact on the price and volume of the scrip by the said announcements made by the company. The price volume data for the period prior to and after the announcements made by the company have been examined. Pursuant to the corporate announcement regarding strategic tie-up with Artilligence Inc. on July 05, 2001, the traded volumes in the shares of the company increased considerably. I note that prior to the said announcement on July 05, 2001, the volume traded on BSE on July 04, 2001 was 1,100 shares being traded in 7 trades. The investigation has pointed out that the average daily volume before the announcements was 1,770 shares per day and subsequent to the said announcement the average daily volume was 13,956 shares per day. The table below would show the impact in the traded volumes and the share price at BSE:

Date	Open Price	High Price	Low Price	Close Price	Weighted Average Price	No. of Shares	No. of Trades	Total Turnover(Rs.)
2 July 2001	97.00	97.50	97.00	97.00	97.20	1000	10	97,200.00
3 July 2001	99.25	100.85	99.25	100.85	100.24	600	6	60,145.00
4 July 2001	100.00	104.50	100.00	104.50	102.93	1100	7	113,225.00
5 July 2001	105.00	108.65	105.00	108.65	107.98	79600	218	8,595,030.00
6 July 2001	109.00	111.00	106.00	107.00	108.38	41500	47	4,497,785.00
9 July 2001	106.00	111.25	102.75	108.30	104.10	47700	125	4,965,720.00
10 July 2001	107.00	107.00	104.00	104.00	104.67	7900	61	826,900.00

From the above table, it can be seen that there was a marked increase in the traded volumes (79,600 shares on July 05, 2001; 41,500 shares on July 06, 2001; and 47,700 shares on July 09, 2001) and a noticeable price rise on the said dates. Similarly, the declaration of the interim dividend had also made an impact in the traded volumes and the share price of the company. The same would be illustrated by the table below:

Date	Open Price	High Price	Low Price	Close Price	Weighted Average Price	No. of Shares	No. of Trades	Total Turnover(Rs.)
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19 July 2001	90.80	92.80	90.80	90.80	92.23	22900	63	2,112,015.00
20 July 2001	89.00	90.60	89.00	89.00	89.57	12100	29	1,083,770.00

9. As explained above, the announcements made by the company had noticeable impact during the period when they were made. This is further substantiated by the fact that the historical trade data of the company (trades in the shares of the company at BSE during June 2001 and August 2001) proves that the scrip was not liquid. Therefore, the company cannot escape liability by saying that *“the change in the price and volume of the scrip takes place due to shareholders purchase and sales in the market and the company does not have any control over the same.”* The submission that *“the announcements made by the company were based on the true facts and were strongly based on the business activities which was essentially material and important for any investor of the company”* needs to be dismissed as it is not sustainable, as can be seen from the facts and circumstances of the case, as brought out above. Thus, by announcing the tie up with Artilligence Inc. which was still at a very initial stage and declaring interim dividend not out of the profits made by the company as required under law and later withdrawing the same would make the company responsible for making statements which are in fact misleading. In the facts and circumstances of the case, the contention of the noticees that the ingredients of Regulations 5(1) (a) & (b) and 6(a) of the PFUTP Regulations are absent in the show cause notice has little merit. In this regard, the said provisions are reproduced herein below:

“Prohibition of misleading statements to induce sale or purchase of securities:

5(1) No person shall make any statements, or disseminates any information which-

- a. is misleading in a material particular; and*
- b. is likely to induce the sale or purchase of securities by any other person or is*

likely to have the effect of increasing or depressing the market price of the securities, if when he makes the statement or disseminates the information-

- (i) he does not care whether the statement or information is true or false; or*
- (ii) he knows, or ought reasonably to have known the statement or information, is misleading in any material particular.*

.....”

Prohibition on unfair trade practice relating to securities

6. No person shall -

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;

.....”

It is already established that the company had made misleading announcement. The said announcements indeed impacted the market price of the company. Needless to say, the volume traded in the shares of the company was also increased pursuant to the said announcements. The said volume/price movement in the shares of the company are mentioned in the show cause notice issued to the noticees. It goes without saying that unsuspecting investors were lured by the announcements made by the company and its directors. Besides, the show cause notice also alleged that the company and its directors issued misleading price sensitive statements and announcements and thereby violated Regulations 5(1)(a) & (b) and 6(a) of the PFUTP Regulations. Therefore, I do not find any merit in the contention of the noticees in this regard. I am also unable to accept the contention that Regulation 6(a) of the PFUTP Regulations would not be attracted in the case. The very act of the company and its directors announcing misleading price sensitive statements (including declaration of dividend which was subsequently

not acted upon by the company) would certainly operated as a fraud, which induced the investors to deal in the shares of the company during the relevant period. In the facts of the case, the price volume movement that took place in the shares of the company would certainly establish the same. I also note the following observation of the Hon'ble Securities Appellate Tribunal in the matter of Ketan Parekh Vs SEBI, *"We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. 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."*

10. The role of the company and its directors in the fraudulent activities is very much evident in the very announcement of certain misleading price sensitive statements and its subsequent impact in the volume/price of the shares of the company. The company and every director/person who at the time of the said violations was in-charge of and was responsible for the conduct of the business of the company, shall be responsible for having violated the provisions of Regulations 5(1)(a) & (b) and 6(a) of the PFUTP Regulations and are liable to be proceeded against and be issued suitable directions.

11. While determining the liability of the directors, the show cause notice has alleged that Mr. Saumil Patel, Mr. Sanjeev Agarwal and Ashutosh Bajpaye were the directors of the company and liable for the alleged violations. The show cause notice alleged that the company and its aforesaid directors issued the misleading price sensitive statements and announcements. In this regard, I note that Mr. Sanjeev Agarwal had submitted that his association with the company was 'initiated' on August 20, 2000 and was 'restricted to five days' and 'ended' on August 25, 2000. In support of his contention, Mr. Sanjeev Agarwal had

enclosed copies of letters dated August 25, 2000 and June 30, 2001, addressed by the company to the BSE. The company, vide letter dated August 25, 2000, informed the stock exchange *inter alia* of the appointment of Mr. Sanjeev Agarwal as a director. Subsequently, the company, vide another letter dated June 30, 2001, informed the stock exchange that Mr. Sanjeev Agarwal had resigned from the directorship of the company on August 25, 2000. I also note from the contents of Form 32 dated August 25, 2000, filed under the relevant provisions of the Companies Act, 1956, submitted by the company, that Mr. Sanjeev Agarwal was appointed on August 20, 2000 and had resigned on August 25, 2000. From the chronology of events as narrated above, I find that Mr. Sanjeev Agarwal was not in the board of directors of the company during the period when the alleged violations had taken place. Therefore, he must be given the benefit. Thus, the show cause notice issued to him is to be disposed of without any directions.

12. In respect of the other two directors, Mr. Saumil Patel and Mr. Ashutosh Bajpaye; both have contended that the show cause notice does not specifically allege that they were responsible for the conduct of the business of the company and that if no such allegation is present to that extent, they cannot be made liable for any misconduct. In support of their contention, they had cited various case laws. I note that Mr. Saumil Patel was appointed as Managing Director in an Extra Ordinary General Meeting of the shareholders on August 20, 2000. Mr. Saumil Patel, vide letter dated September 30, 2008, had stated that he is no more the director of the company and that he was the director only from July 21, 2000 to February 02, 2004. Therefore, I find that Mr. Saumil Patel was a director during the relevant time when the violations had taken place. Mr. Saumil Patel, by virtue of his position as a managing director was in charge of and was responsible for the affairs of the company. Where an offence has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the

conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence. While fixing liability on Mr. Saumil Patel for violating the provisions of Regulations 5(1)(a) & (b) and 6(a) of the PFUTP Regulations, I place reliance on the following observation of the Hon'ble High Court of Delhi made in the matter of Bhatia and others Vs. State and another [MANU/DE/9961/2006] which is a reiteration of the view of the Hon'ble Supreme Court in the matter of S.M.S. Pharmaceuticals Limited vs. Neeta Bhalla -

“20. The Court thereafter clarified the position of a Managing Director or a Joint Managing Director, holding that the very designations of their office suggest that they are the persons in charge of a company and/or responsible for the conduct of business of the company.”

Therefore, I have no hesitation in finding Mr. Saumil Patel for contravening the provisions of Regulations 5(1)(a) & (b) and 6(a) of the PFUTP Regulations.

13. In respect of Mr. Ashutosh Bajpaye, I find from Form-32, that he was appointed as an additional director in the board with effect from August 20, 2000. Section 260 of the Companies Act, 1956 provides for the appointment of additional directors. The proviso to Section 260, prescribes that such additional directors shall hold office only upto the date of the next annual general meeting of the company. The contention of Mr. Ashutosh Bajpaye is that he was a Non Resident and an independent director in the company and was not involved in the day to day working of the company. In this regard, it may be noted that one of the allegations levelled against the company in the show cause notice is that it had failed to comply with the summons issued by SEBI. In respect of the said allegation, SEBI initiated adjudication proceedings against the company. The Adjudicating Officer, while disposing of the said proceedings, vide order dated March 24, 2009, *inter alia* observed “23. As pointed out earlier, the Noticee has submitted to me information which it claims to be the information which was

asked for by the Investigating Authority through the said summonses. However, in my view, such practices should not be encouraged as the submission of the information to the Adjudicating Authority cannot be deemed as compliance of summons. The Noticee could have filed the information sought by the investigating authority to the Board or the authority even after the time specified in summonses. Submission of information at the stage of adjudication does not serve anyone's purpose as examination of this information is not a subject matter of these proceedings and it would be beyond the scope of this proceeding to examine the information submitted by the Noticee." One of the documents submitted in the adjudication proceeding was a certified true copy of the minutes of the Board of Directors of the company held on July 02, 2001. From the said minutes, I note that Mr. Saumil Patel and Mr. Ashutosh Bajpaye in addition to two other directors were present in the said meeting. In the said meeting Mr. Saumil Patel was voted to the chair. During the Board meeting, a copy of the MoU signed between the company and Artilligence Inc. was placed before the Board and after discussions, the said MoU was ratified. According to the said document, I find that Mr. Saumil Patel and Mr. Ashuthosh Bajpayee were present in the Board Meeting of the company held on July 02, 2001 which ratified the signing of the MoU. The liability of Mr. Saumil Patel is already established above. Further, the contention of Mr. Ashuthosh Bajpayee that he was involved in the day to day affairs of the company cannot be accepted. I find that he was a director during the relevant period when the violations were committed and therefore, he becomes liable for the same.

14. The announcements made by the company regarding the tie up with Artilligence Inc. when the deal was still at the rudimentary stage and the declaration of interim dividend and later withdrawing the same were misleading announcements/statements which had impacted the price-volume of the shares of the company at the BSE during the relevant period, as established above. It was further submitted that the announcements were not misleading and

fraudulent in nature thereby did not violate Regulations 5(1)(a) & (b) and 6(a) of PFUTP Regulations 1995. The noticees had stated that the show cause notice does not state the reasons why the announcements made by the company have been alleged to be misleading price sensitive announcements. I am not inclined to accept this submission as the show cause notice did mention the impact on the price-volume of the scrip by such misleading statements. From the foregoing, it would lead to the inference that the company had indulged in the act (making misleading announcements/statements as mentioned above) which would attract the investors into investing in the shares of the company. Therefore, the company and its directors, Mr. Saumil Patel and Mr. Ashutosh Bajpaye are liable for making such misleading announcements and guilty of having contravened the provisions of Regulations 5(1)(a) & (b) and 6(a) of the PFUTP Regulations.

15. With regard to the other submissions made by the noticees; it was submitted that SEBI had conducted investigation for the period April 30, 2001 to August 03, 2001 while the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 came into force on July 17, 2003 and therefore they cannot be charged for having violated the 2003 Regulations. The noticees had also submitted that the substantive provisions under the 2003 Regulations cannot be applied retrospectively and only the provisions relating to procedure can be applied where the investigations are already pending. In this regard, I find that the noticees were alleged to have contravened the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. After the repeal of the 1995 Regulations, the present proceedings were continued in terms of the procedure laid down under the provisions of the 2003 Regulations, whereas the substantive violations alleged against them were under the 1995 Regulations (Regulations 5 and 6 of the 1995 Regulations). The said argument is therefore

without any merit.

16. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11B thereof and Regulations 11 and 13 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereby restrain Stocknet International Limited (Permanent Account Number - AA ECS8494F), Mr. Saumil Patel (Permanent Account Number - ACNPP2023K) and Mr. Ashutosh Bajpaye from accessing the securities market and prohibited from buying, selling and otherwise dealing in the securities market, either directly or indirectly, for a period of six months.

17. The show cause notice dated December 31, 2007 in so far as it is relevant to Mr. Sanjeev Agarwal stands disposed of without any directions.

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

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

Place: Mumbai

Date: July 27, 2009