WTM/PS/10/IVD/ID-03/Oct/09

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

IN THE MATTER OF DESIGN AUTO SYSTEMS LTD.
IN RESPECT OF D.G. GOENKA EQUITIES PVT. LTD.

(SEBI Registration No. INB 011105633)

Date of hearing: **August 18, 2009**

Appearances

For Noticees: **Mr. Yogesh Kedia, Director, D.G. Goenka Equities Pvt. Ltd.**
Mr. Jayant Thakur, C.A

For SEBI: **Mr. Rajeev Rastogi, Presenting Officer**
Mr. G. Ramar, Deputy General Manager
Mr. Pradip Bhowmick, Assistant General Manager
Mr. Amitesh Kumar, Legal Officer

ORDER

Under Regulation 28 (2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigations into dealings in the shares of Design Auto Systems Ltd. (hereinafter referred to as 'DASL'), for the period between August, 2001 and January, 2002, pursuant to a preferential allotment made by it to another company namely Bonanza Biotech Ltd. (hereinafter referred to as 'BBL') on swap basis in the ratio of 1:1. During the period of investigations the scrip of DASL was listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'), Madhya Pradesh Stock Exchange (hereinafter referred to as 'MPSE') and Ahmedabad Stock Exchange (hereinafter referred to as 'ASE').

2. Investigation report states that DASL had made a preferential allotment of 10 crore shares (hereinafter referred to as 'said shares') to BBL on October 29, 2001 which was about 14 times of the pre-issue paid up capital of DASL. The

consideration for this was another preferential allotment of 10 crore shares made by BBL to DASL on the same date which was about 5 times of the pre-issue paid up capital of BBL before allotment. No exchange of cash was found between the two companies. Pursuant to this, DASL first made an application for listing of the said shares allotted to BBL to MPSE and later on to BSE also. MPSE granted listing permission *albeit* with undue haste and without exercising due diligence. However, no trading permission was granted in respect of the said shares. The listing application which was made subsequently to BSE was kept pending, upon apprehension of commission of certain violations of law in the process by DASL. No such application for listing was made to ASE by DASL. On the basis of listing permission given by MPSE, the Central Depositories Services Ltd. (hereinafter referred to as 'CDSL'), a registered depository, dematerialized the said shares of DASL and credited them to the beneficial owner account of BBL.

3. After allotment, a major chunk of the shares allotted by DASL to BBL were offloaded by BBL through a network of entities including D.G. Goenka Equities Pvt. Ltd. (hereinafter referred to as 'noticee') registered with SEBI as stock broker bearing SEBI Registration No. INB 011105633, Coverage & Consultants, Pinnacle Finstock Pvt. Ltd., C.D. Equisearch, Shri Shyam Parwaney and Shri Manoj Ganeriwala on the trading platform of BSE, even though these shares were not listed on BSE. Such offloading was contrary to the provisions of BSE bye-laws and constituted bad delivery on the exchange. However, neither the BSE Clearing House nor any of the other parties to the trade could detect this illegality, since the shares were in the dematerialized form and thereby fungible with other legally allotted shares. As a result, a number of innocent investors who purchased such unlisted shares on the BSE were defrauded and saddled with shares which could not be legally sold on the BSE.

4. When this came to the notice of SEBI and BSE, the demat account of BBL was frozen, after recovering a portion of the shares that were offloaded by it.

A reconciliation of the transfer of 10 crore unlisted shares from BBL's demat account was also worked out and the same stood as under:

Reconciliation of transfer of 10 crore shares of DASL received by BBL

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

Details of shares delivered in the market/ unaccounted for

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

BSE suspended trading in the shares of DASL from January 14, 2002. Upon instructions from SEBI, BSE also annulled all transactions in DASL shares allotted to BBL which had taken place on the exchange till that date. The annulment was subsequently set aside by the Hon'ble High Court of Judicature at Mumbai by an order passed on February 28, 2003 in W.P. No. 209 of 2003 and connected matters (a batch of Writ Petitions filed by aggrieved stock brokers of BSE), mainly on the ground of intervention of innocent third party interests and the matter was remanded to BSE's Governing Board for deciding the same afresh after giving a hearing to the Petitioners. The annulment order was subsequently reversed by the Governing Board itself as they found that the interest of innocent third parties i.e. investors would otherwise be affected.

5. In the mean time, investigations were initiated by SEBI to probe into the alleged malpractices committed by DASL, BBL and various other entities. The investigation revealed that the noticee while trading substantially in the scrip of DASL during the period of August, 2001 to January, 2002, sold 8,33,541 shares of DASL on behalf of its clients Virgin Finance Pvt. Ltd. (hereinafter

referred to as 'VFPL') and Murali Nair. It was observed that both VFPL and Murali Nair were related to/ associated with DASL.

6. It was therefore alleged that the noticee had facilitated introduction of unlisted shares, indulged in synchronized deals and failed to exercise due skill and care. The noticee thereby violated the provisions of Regulations 3 and 4(a), (b) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulation') and Code of Conduct prescribed for stock brokers as contained in Regulation 7 of the SEBI (Stock Broker and Sub-brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations').

7. Thereafter, vide order dated February 03, 2005, SEBI appointed an Enquiry Officer, in terms of provisions of Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations') to enquire into the alleged violations by the noticee. The major observations made by the Enquiry Officer in her report are as follows:

(i) Out of around 6 crore unlisted shares transferred by BBL to various entities, the noticee received 51,00,000 shares for the purpose of future transactions and margin obligations (50,00,000 shares directly from BBL and 1,00,000 shares from Murali Nair, an employee of DASL).

(ii) The receipt and transfer of shares of DASL, from and to the demat account of noticee (account no.: IN300888 14171657) has been detailed in the following table:

Date	Recd. from	Transferred to	No. of shares	Balance
13.11.2001	**BBL**		**50,00,000**	
12.12.2001	Murali Nair		**1,00,000**	51,00, 000
13.12.2001		Delivered in Market	23,100	
12.01.2002		CDSL a/c of DG Goenka	76,900	50,00,000
12.01.2002		Delivered in market	5,16,541	
14.01.2002		Delivered in market	2,17,000	42,66,459
15.03.2002		**BBL**	**42,66,459**	Nil

(iii) The noticee aided and abetted the management of BBL and DASL in propagating the fraud of off-loading unlisted shares of DASL. In the said process, the noticee executed numerous matched transactions of large quantities while trading on behalf of Murali Nair, an employee of DASL.

(iv) The noticee, VFPL, Murali Nair, DASL and BBL are related/ connected/ associated with each other on the basis of observations as under:

a. The directors of VFPL, Prashant Rajgarhia and Smt. Rita Garg are also the directors of DASL. Smt. Rita Garg is wife of Sarvesh Garg, the Chairman & Managing Director of DASL. Smt. Rita Garg is sister of Prashant Rajgarhia. As on March 31, 2001, VFPL held 17,84,900 shares of DASL which decreased to 9,65,700 shares as on March 31, 2002.

b. As per the Annual Report of DASL for the year 2001-02, Murali Nair was Executive Officer (Secretarial) of the company.

c. From the certified copy of the resolution passed in the Board of Directors meeting of BBL held on June 05, 2001, it was observed that Manish Ganeriwala, director of BBL, was authorized to sell the shares of DASL held by BBL, through recognized brokers.

d. VFPL used to contact Manoj Ganeriwala, director of the noticee, to place orders. Incidentally, Manoj Ganeriwala and Manish Ganeriwala were cousins. Further, Manoj Ganeriwala (in the demat account jointly held with his wife) received 60,00,000 shares off-market from BBL and Murali Nair before the trading in the shares of DASL was put under suspension. The receipt and transfer of shares of DASL from and to the demat account of Manoj Ganeriwala (account no.: IN300888 13162987), is detailed in the following table:

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

22.11.2001		Pinnacle Finstock	**50,00,000**	Nil
12.12.2001	Murali Nair		**10,00,000**	10,00,000
29.01.2002	Coverage & Consultants		**2,78,180**	
	Pinnacle Finstock		**47,11,320**	59,89,500
05.03.2002		Arihant Capital Markets	8,75,000	
14.03.2002		BBL	**41,14,500**	
14.03.2002		Murali Nair	**10,00,000**	Nil

e. The client account of Murali Nair was opened on July 15, 2001. Murali Nair was introduced by Prashant Rajgarhia, the director of DASL and VFPL to the noticee. The fact that the introducing authority is directly linked to DASL, could not have escaped its notice.

f. Murali Nair was sole in-charge of the transfer of shares in physical form to the Share Transfer Agent, Ankit Consultancy Services Ltd., for dematerialization on behalf BBL, DASL, VFPL and Shri Sarvesh Garg.

g. DASL, BBL, VFPL and Murali Nair shared the same contact address, i.e. 3A, Ratlam Kothi, AB Road, Saket Tower, Indore.

h. The client account of VFPL with the noticee, which was opened on June 28, 2000, shows that the authorized signatory was Smt. Rita Garg.

i. The preferential allotment of 10 crore shares of DASL amounting to Rs.100 crores to BBL took place on October 29, 2001. On November 13, 2001, just after 15 days of the said allotment, 50 lakh unlisted shares each were transferred to the demat accounts of Manoj Ganeriwala, Murali Nair and that of the noticee.

j. The noticee had furnished two letters dated November 11, 2001 and November 30, 2001. The letter dated November 11, 2001 addressed by Murali Nair to the noticee speaks about the acceptance of 50 lakhs shares of DASL to be transferred to the demat account of the noticee by BBL on behalf of Murali Nair for future transactions and margin obligations. The letter dated November 30, 2001, addressed by BBL to the noticee, the noticee states that BBL is the original holder of these shares of DASL

transferred to the account of the noticee, towards security and margin obligations, on behalf of Murali Nair.

k. The noticee and one of its directors received large number of shares of DASL, just a few days after the preferential allotment. The fact that there were reasons beyond what was stated by these entities, is apparent from the manner of credit/ debit of these shares from the respective accounts of the said entities emanating due to the nexus existing between the said entities or else there is no reasonable explanation for the transfer of such shares in bulk, to any unknown entity or even an entity barely acquainted to them. Even if the contention of the noticee, claiming total ignorance of the underlying reason of the transfer of shares were to be accepted, or even if it were to be considered that the noticee was not known to BBL, the transfer of shares, to one of its directors (Manoj Ganeriwala) simply to deal with the shares in the market is implausible, especially considering that these were the shares coming directly from the account of BBL.

l. Manoj Ganeriwal had stated that the shares were erroneously transferred to his demat account and had also furnished a letter from BBL dated November 11, 2001 stating that the transfer so made into his demat account was due to oversight and that the said shares were supposed to be transferred to Pinnacle Finstock Pvt. Ltd. Even if one were to accept this explanation an important point of consideration is that the transfer had taken place on November 13, 2001, while the said letter is dated November 11, 2001. This leads to the reasonable conclusion that the transfer of shares had already taken place, before the receipt of the letter. Furthermore, unless Manoj Ganeriwal, especially his demat account details, was known to BBL such transfer even by mistake was not possible.

m. On November 13, 2001, the noticee received 50 lakh shares of DASL from BBL. The next transfer of 1 lakh shares of DASL was a month later, from the account of Murali Nair on December 12, 2001. There does not appear

to be any plausible reason for noticee to hold such a huge quantity of shares i.e. 50 lakhs for a month, without executing even a single transaction on anybody's behalf. The noticee had however contended that the said shares were towards margin and future requirements and that certain transactions did take place. Incidentally, the first transfer took place only on December 13, 2001, that too for a meager quantity of 23,100 shares. The second transfer of 5,16,541 shares of DASL took place after a month later i.e. on January 12, 2002. On the same day a transfer of 76,900 shares was made from one demat account of the noticee to another demat account of it.

n. From the whole gamut of activities, it appears that only one major transfer in the scrip i.e. of 5,16,541 shares, took place after 2 months. In the mean time 50 lakh shares of DASL continued to remain in the account of the noticee for more than 2 months. Murali Nair transferred shares to the tune of 10 lakh shares of DASL into the account of Manoj Ganeriwala on the same date as that of the date of transfer to the noticee i.e. on December 12, 2001. From a close study of the transactions of the noticee and Manoj Ganeriwala as brought out in the tables above, it is apparent that 42,66,459 shares and 51,14,500 shares of DASL were lying in their respective demat accounts, which were then transferred back to BBL and Murali Nair almost at the same time i.e. while Manoj Ganeriwala transferred the said shares on March 14, 2002 to BBL and Murali Nair, the noticee transferred the said shares on March 15, 2002 into the account of BBL.

(v) Noticee indulged in matched trades. The findings made by the Enquiry Officer in this regard are as follows:

a. Eleven trades, which were found to be synchronized in nature, were executed between the noticee and other counter parties related in one way or the other with BBL/ DASL. Details of such transactions are as follows:

Member Code	Buy Client	Buy Order Time	Counterparty	Sell Order time	Counter	Trade Qty.	Price	Trade Time
D0171	Murali Nair	14:31:29	H.B. Stock Hold	14:32:31	D0486	100000	5.70	14:32:32
D0171	Murali Nair	15:15:29	R.S. Capital	15:15:52	D0785	15700	5.70	15:15:52
D0171	Murali Nair	15:15:29	R.S. Capital	15:15:52	D0785	9300	5.70	15:15:52
D0171	Murali Nair	15:15:29	R.S. Capital	15:16:15	D0785	20700	5.70	15:16:15
D0171	Murali Nair	15:15:29	R.S. Capital	15:16:39	D0785	25000	5.70	15:16:39
D0087	Vargin/Bonanza	11:05:16	Murali Nair	11:04:43	D0171	100000	5.40	11:05:16
D0087	Vargin/Bonanza	11:05:49	Murali Nair	11:04:53	D0171	98200	5.45	11:05:49
D0171	Murali Nair	14:39:36	NA	14:40:07	D0291	8949	5.50	14:40:08
D0171	Murali Nair	10:18:10	NA	10:17:03	D0006	9500	5.20	10:18:11
D0171	Murali Nair	10:18:40	NA	10:17:03	D0006	6700	5.20	10:18:41
D0171	Murali Nair	10:18:43	NA	10:17:03	D0139	10000	5.20	10:18:43

b. A close reading of all the deals evidences the fact that there was a matching of the buy and the sale quantity and the buy and the sale price in almost all the trades such that the said orders were placed almost within a minute. This proximity in the inputting of orders at the same price and for the same quantity, resulting in almost perfect matching in all the trades, with all the three parameters i.e. quantity, price and most importantly, the time, required to conclude the trades to the extent of two decimal places, indicated synchronization in the logging in of the orders, albeit executed on the screen of the exchange. One could accept it as a coincidence in case of a solitary incident or two. However, the same happened regularly.

c. Considering the relationship among the entities as detailed earlier, the element of predetermination between the entities stands established. Further, all the 11 synchronized trades were for only their client Murali Nair.

(vi) Noticee played crucial role in introduction of unlisted shares of DASL into the market. The observations made by the Enquiry Officer in this regard are as follows:

a. The Disciplinary Action Committee (hereinafter referred to as 'DCA') of BSE, vide its order dated August 07, 2002, held the noticee to be responsible to some extent, in facilitating the trading in the unlisted shares of DASL between November 10, 2001 and January 11, 2002 and accordingly penalized them by suspending their membership rights for a period of three months w.e.f. August 08, 2002 and warned the noticee to desist in entering into such transactions in future. Incidentally, the noticee was represented before the DAC by Manoj Ganeriwala.

The noticee challenged the decision of the DAC, before the Hon'ble High Court of Bombay by filing a writ petition. The High Court, vide its order dated October 01, 2002 stayed the direction issued by the DAC against the noticee. In the meantime, the noticee appealed before the Governing Board of BSE which in its order dated December 05, 2002 reduced the period of suspension and limited it to the duration, for which the member had remained suspended i.e. September 08, 2002 to October 01, 2002.

b. Furthermore, BSE had annulled all the transactions in the scrip of DASL, of all entities for the period from November 10, 2001 and January 11, 2002. This matter was however brought before the Governing Board of BSE for fresh consideration. The Governing Board of BSE after considering submission of all concerned entities passed a speaking order dated April 10, 2003. While discussing the issue of the annulment of trades in the scrip of DASL, the Governing Board of BSE in the cited order, directed that those transactions would not be annulled where the settlements were already completed and as it would not be possible to restore shares quo ante in all respects. In this respect the exchange administration was directed to return the shares and the money to the buying and the selling members in respect of their dealings in the scrip of DASL, *inter-alia* on the ground that selling brokers, who might have acted bonafide, must not be necessarily penalized.

However, considering the peculiarities of the case, the view taken by the Governing Board of BSE that all the brokers, in question, had acted in the normal course of the business and in good faith, is not fully acceptable. Had this been true, the noticee would not have indulged in synchronized trades or carried out off-market trades, that too particularly in the scrip of DASL, or trade for entities connected with DASL directly/ indirectly viz. Murali Nair of DASL and VFPL. The same might not have been co-incidental but prompted by reasons borne out of a common objective between them and the said entities. This is perhaps the reason that very rightly; the DAC suspended the membership rights of the noticee for a period of 3 months which was subsequently reduced to two months by the Governing Board of BSE.

c. It has also been contended on behalf of the noticee that their clients were not aware of the fact that the shares of DASL were unlisted. The argument is based on the contention that no one could be aware of the difference between both the listed and unlisted shares of DASL, considering that CDSL had issued identical ISIN numbers to both such shares. Such an argument could have been accepted, but for the following factors:

- The noticee had executed synchronized/ matched trades on behalf of its clients.
- Off-market transfer of 50,00,000 shares of DASL each to the noticee and Manoj Ganeriwala, one of the directors of the noticee, on the same date i.e. November 13, 2001. Both the entities disposed off the balance shares of DASL in and around the same time (i.e. within a gap of one day) in the month of March.
- Manish Ganeriwala, cousin of Manoj Ganeriwala, was in the Board of BBL.
- Routing of all the transactions in the scrip of DASL by Murali Nair through Manoj Ganeriwala.

- The shares for Murali Nair, employee of DASL, came from the demat account of BBL.
- For the proceedings before the DAC of BSE, the noticee was represented by Manoj Ganeriwala.

8. Based on the above observations the Enquiry Officer, in her report dated December 06, 2006, has hold the noticee guilty of violating provisions under Regulations 3 and 4(a), (b) & (d) of PFUTP Regulations and the Code of Conduct prescribed for stock brokers as contained in Regulation 7 of the Broker Regulations and recommended a penalty of suspension of certificate of registration of the noticee for a period of twenty (20) days.

9. However, SEBI felt that the penalty recommended by the Enquiry Officer was not commensurate with the alleged violations committed by the noticee as brought out in the Enquiry Report. Accordingly, a Show Cause Notice dated May 10, 2007 (hereinafter referred to as 'SCN'), was issued to the noticee in terms of regulation 13 (2) and 13(5) of the Enquiry Regulations advising it to show cause as to why a penalty higher than the penalty recommended by the Enquiry Officer should not be imposed on them. A copy of the Enquiry Report was also provided to the noticee along with the SCN.

10. Noticee, vide its letter dated June 11, 2007 replied to the SCN. An opportunity of personal hearing was granted to the noticee on August 18, 2009 before me during which Shri Yogesh Kedia, Director and Shri Jayant Thakur, Chartered Accountant appeared on behalf of the noticee and made oral submissions.

11. I have carefully considered the SCN, reply of the Noticees to the SCN and the submissions made during the personal hearing. The contentions of the Noticees in their replies, in brief, are:

a. They had no knowledge that the shares were unlisted as these were in demat form and there were no restriction of any sort on trading of the shares of DASL. It was not possible for it to figure out that certain part of

the share capital of the company was not listed in the stock exchange. Further, the announcement (financial result) put up on the BSE website also reflects the enhanced capital base.

b. If the transactions were synchronized, then there had to be fixed counter parties. However, in the present case there were at least fifty counter party broker involved, therefore, it can't be alleged that these trades were synchronized.

c. No intention of carrying out any price manipulation, fraud, etc. and no extra benefit derived out of such transactions.

d. The employee of the noticee, Manoj Ganeriwala, if committed any irregularity, the noticee cannot be held liable for negligence nor can the noticee be said to have participated or abetted such alleged irregularities.

e. The clients in question had a long relationship with the noticee and transactions had always been regular, their payments and deliveries being on time and there was nothing that would arouse its suspicion.

f. Trading through the noticee had been on a couple of days only. There was nothing to draw the attention of the noticee. As the trading was at a steady price of around Rs.5.50.

g. There is nothing wrong in a broking firm receiving shares in advance and malafide meanings have been ascribed to it without having any basis. Shares are regularly taken by brokers as margin for trading of clients and indeed this is permitted and approved by SEBI and BSE directives. This was one of the objectives of the noticee while taking such shares (50,00,000 shares in question) as delivery in their account so that they could use these to meet deficits, if any, of the concerned clients.

h. Another objective of taking shares was that the noticee would be able to give delivery of the shares to the exchange immediately on sale without needing to wait for the client to deliver it to the noticee. No misuse of such shares could be possible merely because the shares were lying in the noticee's account.

i. The unilateral suspension by BSE had not been viewed in its proper context and reality. BSE had ordered suspension for three months. The noticee after making basic attempts to resolve the issue through BSE, filed a writ

petition before the Hon'ble High Court of Bombay. However, before the final order of the Court for such petition, BSE agreed with the noticee in an out of court settlement and the suspension was lifted with immediate effect from the date of such agreement and thus the suspension ended after about two months. There was no adverse finding against the noticee and it was an agreement reached by mutual consent.

j. The 50 lakhs shares received from BBL on November 13, 2001, were in the form of advance pay-in and margin requirement on behalf of the client Murali Nair. In this regard, copy of the letter dated November 11, 2001 from Murali Nair to the noticee and letter dated November 30, 2001 from BBL to the noticee were pointed out. In letter dated November 11, 2001, the noticee was requested to accept 50 lakh shares of DASL which would be transferred from the account of BBL. The noticee was requested to deposit and utilize these shares towards the client's obligations for margin and future market obligations. In the letter dated November 30, 2001 BBL informed that it was the original shareholder of the 50 lakh shares which had been transferred to the demat account of the noticee towards security margin or future obligation on behalf of Murali Nair.

k. It was submitted that the two clients namely, Murali Nair and VFPL, who already had a history of dealings with the noticee, approached for sale of certain shares of DASL, in the ordinary course of business. They were trading through the noticee since 1997 and 1999 (VFPL and Murali Nair, respectively). They regularly carried on trading with the noticee since such years and complied with their obligations regularly and on time. They traded in fairly large quantities in blue chip scrips and other shares. In this regard the noticee submitted transaction statements of the said two clients for the period from April 01, 2001 to March 31, 2002. As they were trading in numerous scripts, there was no reason for the noticee being suspicious about their trading in the scrip of DASL.

l. The noticee argued that the finding by the Enquiry Officer with regards to synchronized/ matched trading is correct. The following arguments were put forward in this regard:

- From the trade details, as provided by SEBI, it may be observed that such trades were highly scattered;
- The counter party broker/ clients were different. There were at least fifty counter party broker involved in all the trades executed by the noticee in the scrip of DASL during the relevant period. Therefore, it can't be alleged that these trades were synchronized in nature.
- Most of the trades were executed within a small price range of around Rs. 5.50.
- The noticee had carried out order instructions received from its clients. It had no knowledge about the counter parties.

m. The noticee submitted that the receipt of shares by one of its directors in their personal capacity does not prove that the noticee was a part of the scheme of off-loading of the unlisted shares.

n. The noticee also submitted that the Enquiry Officer in her report has erroneously calculated the period of suspension undergone by it as 23 days i.e. from September 08, 2002 to October 01, 2002. However, in reality the noticee had under gone suspension for a period of 54 days i.e. from August 08, 2002 to October 01, 2002. In this regard the noticee provided copies of the directions/ communications dated August 07, 2002 and December 20, 2002 issued by BSE to the noticee.

o. Certain authorities failed to carry out their duties and there were certain lacunae in law.

p. Manoj Ganeriwal has been removed from the office.

12. I find that the Noticee has not declined or raised any doubt on the data. However, Noticee has argued and taken defence that the shares were received for margin purposes. It has been further argued that the trades were genuine and not manipulative. Further, while trading on screen based system they were not aware of the counter parties.

13. I have taken into consideration the SCN issued to the noticee, the reply thereto, submissions made during the course of personal hearing and other materials on record. My findings are as under:

a. I note that the noticee had mainly transacted on behalf of two clients namely, Murali Nair and VFPL. The noticee has submitted that the said clients were trading through them since 1997 and 1999 (VFPL and Murali Nair, respectively). They regularly carried on trading with the noticee since such years and complied with their obligations regularly and on time. They traded in fairly large quantities in blue chip scrips and other shares. At this juncture, I refer to the submissions made by the noticee, vide its letter dated September 22, 2005, to the Enquiry Officer. Along with the said letter the noticee had enclosed copies of the know-your-client (hereinafter referred to as 'KYC') agreement form in respect of VFPL and Murali Nair. I observe that the client account of VFPL was opened on June 28, 2000, while the account of Murali Nair was opened only on July 15, 2001. Therefore, the submission made by the noticee that the said two clients were their long standing clients is not correct.

b. Further, from the transaction statements of the said two clients for the period from April 01, 2001 to March 31, 2002, as provided by the noticee, I note that Murali Nair had transacted only in two scrips namely, DASL and Reliable Plastics Ltd. It would be pertinent to note that BBL was originally incorporated as Reliable Plastics Ltd. on June 04, 1981. The company changed its name to BBL on June 08, 2001. Murali Nair had bought 7,19,562 shares of DASL and sold 6,89,662 shares of DASL during the year 2001-02. Out of the total transaction value of Rs.73,46,183, trading in the shares of DASL accounted for Rs.69,05,777. The balance accounting for trading in the shares of BBL. During the period August, 2001 and January, 2002, the noticee bought 6,05,900 shares and sold 5,76,000 shares of DASL on behalf of Murali Nair. The net position on behalf of the said client being a buy of 29,900 shares. VFPL on the other hand had transacted in few other scrips through the noticee. During the year 2001-02, VFPL had sold 5,36,941 shares of DASL. Out of the total transaction value (buy plus sale) of Rs.30,76,033 (sales consideration being Rs.19,89,447.15), trading in the shares of DASL accounted for Rs.8,74,178. During the period August, 2001

and January, 2002, the noticee sold 5,16,541 share of DASL on behalf of VFPL.

Therefore, the argument put forward by the noticee that the transactions were in normal course of trading of the said clients and accounted for a small part of their overall transactions does not hold water.

c. The noticee has submitted that the 51 lakh shares of DASL were transferred from the demat accounts of BBL (50 lakh) and Murali Nair (1 lakh) to the account of the noticee towards security margin or future trading obligation on behalf of Murali Nair. It would be pertinent to note that no shares were received either from VFPL directly or from any other entity on its behalf. The copy of the letter dated November 30, 2001, from BBL to the noticee, which was submitted by the noticee to make its case, in case the same is to be relied upon, clearly indicates that the transfer of 50 lakh shares were towards security margin of future market obligation on behalf of Murali Nair. However, I find that the shares were used to meet market obligations of VFPL for which no authorization was granted to the noticee. Therefore, the submission made by the noticee that they acted in the normal course of their business and had no knowledge that huge numbers of unlisted shares of DASL were being off-loaded by various entities, specially their clients namely, Murali Nair and VFPL, it is not correct.

d. Further, the receipt of 60 lakh shares of DASL from BBL (50 lakh) and Murali Nair (10 lakh) by Manoj Ganeriwal, one of the directors of the noticee, in his personal account shows the extent to which the noticee and one of its official, in his personal capacity, was involved in the whole scheme. Noticee however, has submitted that Manoj Ganeriwal has been removed from its office. But the acts committed by him during the time of his connection with the noticee are binding upon it and it cannot escape its liability for such acts. I note that in a separate order dated November 07, 2007, passed by SEBI, Manoj Ganeriwala has been directed to restrain from accessing the securities

market and been prohibited from buying, selling or dealing in securities either directly or indirectly for a period of three years.

e. With regards to the alleged synchronized/ matched trades executed by the noticee on behalf of its clients, I find that the supporting details provided by the Enquiry Officer in this regard falls short of establishing the charge that the referred 11 trades were outcome of synchronization of orders. As pointed out by the noticee, the trades were scattered and the counter party broker/ clients were well dispersed. No relation/ connection/ association, to show that they were acting in concert, have been brought out among the noticee and/ or its clients with the counter party broker and/ or clients. Merely because the buy order and the sale order were placed within a time span of one minute, it is not possible to conclude that resultant trades were necessarily synchronized/ matched trades.

14. I note that the noticee, vide its letter dated August 29, 2007, applied for settlement of the proceedings through a consent order in terms of SEBI Circular dated April 20, 2007. SEBI, however, did not agree to settle the proceedings by consent as the terms offered by the noticee were not adequate. Due to this application the present proceedings were kept in abeyance.

15. As regards the contention of the noticee that some authorities have failed to carry out their duties and there were certain lacunae in law, I note that it has not been made clear which authority failed to carry out what duties and what were the lacunae in law which induced the noticee to act in the manner he did. Hence, I find no merit in the argument of noticee.

16. The question which now arises is as to whether the conduct of the noticee falls within the prohibition of the PFUTP Regulations, 1995 read with Code of Conduct prescribed for stock brokers as contained in regulation 7 of the SEBI (Stock Broker and Sub-brokers) Regulations, 1992. As regards whether the above conduct violates Regulations 3 and 4(a), (b) & (d) of the PFUTP

Regulations, 1995 read with Code of Conduct prescribed for stock brokers as contained in Regulation 7 of the Broker Regulations as alleged in the SCN, it is felt necessary to refer to the provisions (and to Regulation 2(1)(c) which is required to understand Regulation 3), which are as under:

"Definitions

2.(1) In these regulations, unless the context otherwise requires -

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(c) "fraud" includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-

(1) the suggestion, as to a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent;

and "fraudulent" shall be construed accordingly.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Prohibition of certain dealings in securities

3. No person shall buy, sell or otherwise deal in securities in a fraudulent manner.

Prohibition against Market Manipulation

4. No person shall -

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;

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(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;

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….”

The noticee while transacting on behalf of its clients with full knowledge of the fraud being committed by BBL and other entities, who offloaded the unlisted shares on the trading floor of BSE, impliedly represented that these were listed shares which could be validly delivered in the BSE as per its bye-laws. The clearing house of BSE and various counter parties to the transactions, being innocent investors, were unsuspecting and took delivery of such shares aggregating in number to 98,21,074, out of which 8,33,541 shares were introduced by the noticee on behalf of its clients. As noted above, as the shares were in the demat form, they were indistinguishable from other validly listed shares of DASL. Further, the close nexus observed between noticee and BBL shows that the noticee was part of the scheme to defraud investors by palming off the unlisted shares for unjust and unfair gains at the cost of lay investors where the noticee had knowingly aided its clients.

Thus, the act of the noticee is fraudulent within the meaning of Regulation 2 (1)(c)(1) and (2) of the PFUTP Regulations. The defrauded parties are the numerous investors who were counter parties to the transactions. Accordingly, I hold that the noticee is guilty of violating Regulation 3 of the PFUTP Regulations, 1995. However, as mentioned earlier from the details provided in the Enquiry Report fails to establish that the trades executed by the noticee were synchronized/ matched trades. Further, no instance of influencing the price or volume through such trades has been brought out in the Enquiry Report. In view of the same, the alleged violations of alleged violations of Regulations 4(a), (b) & (d) of the PFUTP Regulations which have been referred above, are not sustainable.

The Code of Conduct prescribed for stock brokers as contained in regulation 7 of the Stock Regulations, requires every stock broker to

> (i) maintain high standards of integrity, promptitude and fairness in the conduct of all his business;

(ii) act with due skill, care and diligence in the conduct of all his business;
(iii) not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumors with a view to distorting market equilibrium or making personal gains; &
(iv) not create a false market either singly or in concert with others or indulge in any act detrimental to the public interest or which leads to interference with the fair and smooth functioning of the market.

The findings made above clearly indicate the noticee of being guilty of having facilitated the introduction of the unlisted shares of DASL into the market on account of their collusive activities with the entities as detailed earlier. Thus, I find that the Enquiry Officer has rightly held it guilty of violating the provisions of Code of Conduct prescribed for stock brokers as contained in Regulation 7 of the Broker Regulations.

17. I find that the Enquiry Officer, in her report, has mentioned that the business operation of the noticee was effectively suspended for a period of 23 days i.e. from September 08, 2002 to October 01, 2002. However, the noticee has submitted that it had under gone suspension for a period of 54 days i.e. from August 08, 2002 to October 01, 2002. In this regard the noticee provided copies of the directions/ communications dated August 07, 2002 and December 20, 2002 issued by BSE to the noticee. Having gone through the aforementioned directions/ communications issued by BSE, I find that the contention of the noticee in this regard is correct. However, it would be pertinent to note here that considering the gravity of violations and the nature of charges against the noticee, the Board (SEBI) felt that the penalty recommended by the Enquiry Officer was not commensurate with the alleged violations committed by the noticee as brought out in the Enquiry Report and a higher penalty requires to be imposed on the noticee. The SCN was issued accordingly.

18. I have considered the nature of violations brought out in the show cause notice, recommendation made by the Enquiry Officer, the view taken by the Board (SEBI) on the recommendation of the Enquiry officer, which was

communicated to the noticee through the SCN and submissions made by the noticee. I find that the general course of events following the swap allotments made by DASL have undermined investor confidence in the demat system and in the integrity of the securities market in general. As seen above, the noticee, D.G. Goenka Equities Pvt. Ltd. (SEBI Reg. No.: INB 011105633), had played an important part in the subsequent off-loading of the unlisted shares of DASL in BSE. As noted above, I find noticee guilty of violation of Regulation 3 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 read with Regulation 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 and the Code of Conduct prescribed for stock brokers as contained in Regulation 7 of the SEBI (Stock Broker and Sub-brokers) Regulations, 1992.

19. At this stage, I note that the noticee has relied upon various precedents of Hon'ble SAT for strengthening its arguments of awarding of no further punishment. I have considered the case law and find that the facts of the case are different from the present case. As detailed above, the charges leveled in the present case are more serious than the other violations committed in the securities market and the same needs to be viewed seriously.

20. I note that pursuant to the notification of the SEBI (Intermediaries) Regulations, 2008, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the SEBI (Intermediaries) Regulations, 2008, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of SEBI (Intermediaries) Regulations, 2008.

21. I, therefore, in the exercise of power conferred upon me by Sections 19 of the Securities and Exchange Board of India Act, 1992, read with Regulation 28(2) SEBI (Intermediaries) Regulations, 2008, hereby suspend the certificate of

registration of the stock broker D.G. Goenka Equities Pvt. Ltd., having SEBI Reg. No. INB 011105633, (PAN- AABCD 1447Q) for a period of two months.

22. This order shall come into force on expiry of twenty one days from the date of this order.

Date : Oct 29, 2009
Place : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA