

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

IN THE MATTER OF ATN INTERNATIONAL LTD.

In respect of Mr. Siddhartha Srivastava

ORDER

Under Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 and Regulation 12 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation on receipt of information of delivery of fake shares of ATN International Ltd. (hereinafter referred to as 'ATN') in the market. The investigation was conducted for the period, May 19, 1999 to December 30, 1999, *inter-alia*, to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations'). During the period of investigation, the scrip of ATN was listed on Bombay Stock Exchange (hereinafter referred to as 'BSE'), National Stock Exchange (hereinafter referred to as 'NSE'), Calcutta Stock Exchange, Ahmedabad Stock Exchange, Delhi Stock Exchange and Jaipur Stock Exchange.
2. Investigation revealed, significant increase in the price and volume of the scrip during the relevant period. At NSE, the price of the scrip increased from Rs.2.50 on May 19, 1999 to Rs.63.15 on December 30, 1999. At NSE the price of the scrip fluctuated from a low of Rs.2.10 on 15 June, 1999 and attained a maximum price of Rs.88.05 on December 24, 1999. Similarly it

was seen that the quantity traded also varied from a low of 300 shares on July 01, 1999 to a high of 19,48,500 shares on December 15, 1999. It was revealed that one Mr. Siddharth Srivastava (hereinafter referred to as 'noticee') got some shares of ATN printed without informing the Registrar and Share Transfer Agent (hereinafter referred to as 'RTA') and delivered the same in the market.

3. Accordingly, SEBI issued show cause notice dated January 24, 2007 (hereinafter referred to as 'SCN') to noticee under Section 11(4)(b) and 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). The SCN alleged that the acts of noticee were in violation of the provisions of Regulations 3 and 6(a) of PFUTP Regulations. Accordingly, it called upon the noticee to show cause as to why suitable directions under Section 11B of SEBI Act read with Regulation 11 and 12 of PFUTP Regulations read with Regulation 11 and 13 (3) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, should not be issued against him.
4. No reply was received from the noticee despite service. I note that reminders were also issued to the noticee but till date no reply has been received by SEBI, from the noticee. Pursuant to this, in order to proceed with the matter an opportunity of personal hearing was granted to noticee before me on September 25, 2009 at Ahmedabad. Again, noticee did not turned up for the personal hearing in spite of due intimation. Further, no communication was received from the noticee. I have seen that sufficient opportunities have been given to noticee to explain his case. In view of this, I am compelled to proceed with the matter *ex-parte*, on the basis of material available on record, as against the noticee, having complied with the principles of natural justice.
5. I have carefully considered the SCN and material available on record. I note the submission of noticee, at the time of investigations that this was a mistake occurred due to negligence of his employee. After having examined the said

details, the issue arises for my consideration is: Whether the noticee has violated the provisions of Regulation 3 and 6(a) of PFUTP Regulations?

- a.** I note from the findings of the investigation, that certain share certificates delivered by persons closely connected with the company and apparently arising out of a financing deal were not treated as genuine by the RTA. Investigations revealed that the noticee who was a Director of ATN, got the shares of ATN printed without informing the RTA and delivered the same to Nisha Investments Pvt. Ltd. and Sainath Marketing Pvt. Ltd. as a consideration of a financial deal.
- b.** To the allegations of SEBI, noticee submitted before the Investigation Authority that on becoming director of ATN, he was given one crore shares of ATN. These shares were given at the initial stage of his association with ATN, in lieu of goodwill and technical expertise which he would bring to the business. It was submitted by the noticee that the said shares were originally held by three corporate entities which were owned by Mr. Santosh Kumar Jain, Managing Director of ATN and those shares were allotted to him by Santosh Kumar Jain. I note from the submissions of noticee, that with regard to this one Anil Shah, a Delhi based businessman and an associate/ friend of Santosh Kumar Jain gave him 7 jumbo share certificates of 1 lakh each totaling to 7 lakh shares of ATN. However, I note that the noticee has not produced any documentary proof to prove his claim of such transfer.
- c.** On specifically asking about the fake shares issue, noticee submitted before the Investigating Authority that he had occupied space at 17th floor, Atlanta building, Mumbai which belonged to one Mr. Paresh Shah of Nisha Investments Pvt. Ltd. To meet certain financial obligations towards Mr. Paresh Shah, the noticee sold the shares to Nisha Investments Pvt. Ltd. and Sainath Marketing Pvt. Ltd. belonging to Paresh Shah at an all time low price of Rs.2 per share. As the shares were in jumbo lot, he

asked one of his then employee, Mr. Mahesh Jain to get the seven jumbo share certificates of 1 lakh each splitted in marketable lots of 100 each. However, Mahesh Jain got the fresh share certificates printed at Mumbai itself without informing or sending them to RTA at Kolkata. Further, the employee delivered a packet of certain shares which were handed them over to Paresh Shah. It has been submitted that due to miscommunication between Mumbai and Kolkata offices of ATN, the splitting of the jumbo share certificates were not taken on record in spite of his instruction to Mahesh Jain to get the shares split in consultation with the Kolkata office/ RTA.

- d. I note that, when these shares as delivered by the noticee, were sold by Paresh Shah in market, the shares were returned as bad delivery since the share master with RTA at Calcutta showed different holders' name for those certificate numbers and distinctive numbers. Hence, they refused to transfer the shares and adjudged them as fake. Upon being intimated of the same, noticee asked Santosh Kumar Jain to transfer genuine demated shares to his account so that the same could be given to Paresh Shah to make good the bad deliveries. Santosh Kumar Jain gave genuine demat shares duly transferred to the account of noticee. By this the noticee replaced the fake shares with genuine demat shares standing in his name.
- e. I observe that the splitting of the share certificates, printing and handing over to Paresh Shah without informing the RTA amounts to printing and circulating fake shares in the market. I note from the submissions of the noticee that out of total number of shares of ATN, he gave 5,10,000 shares to Paresh Shah, destroyed 1,00,000 shares and surrendered the balance unsold shares i.e. 90,000 to the company for cancellation. I do not find any cogent reason in the submission made by the noticee that he destroyed 1,00,000 shares of ATN. No prudent person and especially one who is the director of a listed company would destroy substantial number

of shares. It points out to the fact that the noticee was aware that the shares were fake and he had no reason to continue holding such shares.

- f.** It may be noted that the role of Mahesh Jain as revealed by the noticee could not be verified from Mahesh Jain by the Investigating Authority as his whereabouts could not be provided by the noticee. Noticee could neither produce Mahesh Jain nor could he give any evidence in support of his statement regarding Mahesh Jain having got printed the above certificates.
 - g.** I note that, even if the submissions of the noticee are believed Mahesh Jain was only acting as per his directions. Further, the source of the so-called jumbo shares could not be explained by the noticee. In view of this, noticee stands guilty of circulating fake shares in the market and caused loss to investors although later on the said fake shares were replaced by genuine shares. Noticee accepted that he being from a technical background was not aware of the matter related to share transfer and stock market dealings. However, this argument of noticee cannot be accepted, as he being Director of a limited company is expected to know and cannot unilaterally get share certificates printed and transferred privately without informing the RTA.
- 6.** From the above, it is established that the noticee had indulged in issuing of fake share certificate in the market and therefore is guilty of violating the provisions of Regulations 3 and 6(a) of PFUTP Regulations.
- 7.** Now therefore, on the basis of above discussion, I in exercise of the powers conferred upon me under Sections 19, read with Sections 11, 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the Securities and Exchange Board of India (Prohibition of fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I do hereby prohibit Mr. Siddharth Srivastava from buying, selling or dealing in securities

in any manner, or accessing the securities market directly or indirectly in any manner whatsoever for a period of two years from the date of the order.

8. This order shall be served on all recognized stock exchanges and depositories to ensure that the noticee is not allowed to undertake transactions as prohibited in Para 7 above.
9. This order shall come into force with immediate effect.

DATE : DECEMBER 02, 2009
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA