

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

IN THE MATTER OF NETVISTA INFORMATION TECHNOLOGY LTD.

In respect of Mr. Rajiv Samani, Panraj Financial Services Pvt. Ltd., Panache Securities Pvt. Ltd. and Ms. Bela Kamdar

ORDER

Under Sections 11(4)(b) of the Securities and Exchange Board of India Act, 1992

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the buying, selling and dealings in the scrip of Netvista Information Technology Ltd. (hereinafter referred to as 'Netvista') for the period of August 01, 1999 to January 07, 2000. During the relevant period, the price of the scrip at Bombay Stock Exchange (hereinafter referred to as 'BSE') increased from ₹14 as on August 02, 1999 to ₹125.50 as on January 05, 2000. Such increase in prices of the scrip of Netvista was also seen at National Stock Exchange (hereinafter referred to as 'NSE') where the price increased from ₹12.70 as on August 02, 1999 to ₹122.90 as on January 05, 2000.
2. Investigations revealed that during the relevant period, Mr. Rajiv Samani, Chairman and Managing Director, Netvista had created misleading appearance of trading in the scrip of Netvista. Companies namely Panache Securities Pvt. Ltd. (hereinafter referred to as 'Panache'), Panraj Financial Services Pvt. Ltd. (hereinafter referred to as 'Panraj') and Samraj Holdings and Investments Ltd. (hereinafter referred to as 'Samraj'), were also found actively trading in the scrip of Netvista. It has been revealed that these companies were promoted by Rajiv Samani. It was also revealed that Ms. Bela Kamdar, the sole proprietor of Jupiter Investments (hereinafter referred to as 'Jupiter') is the sister of Rajiv Samani's wife and was found to be the close associate of

Rajiv Samani. Investigations have revealed that Rajiv Samani had traded in the scrip of Netvista through his associate entities.

Jupiter was found actively trading in the scrip of Netvista through Mission & Vision Broking Pvt. Ltd. (hereinafter referred to as 'MVB'), a sub-broker to Alliance Finstock Ltd., member BSE and Sunil Pandurang Mantri, member NSE, at the relevant point of time. Rajiv Samani was found to be funding the clients of MVB. Investigations have also found that companies namely Goldcrest Capital Markets Ltd. and Goldcrest Exports Ltd. had sold the shares of Netvista on behalf of Rajiv Samani.

3. Based on the findings of investigation, SEBI *inter alia* issued a common show cause notice (hereinafter referred to as 'SCN') dated February 20, 2004, to Rajiv Samani, Panache, Panraj and Ms. Bela Kamdar (hereinafter all collectively referred to as 'noticees') under Section 11(4)(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). The SCN alleged that Netvista had violated the provisions of Guidelines for Disclosure and Investor Protection – Preferential Issues. Further, it was alleged that Rajiv Samani while trading in the scrip of Netvista, through his associate entities, had funded various clients of MVB and thereby created misleading appearance of trading in the scrip. Such activities contributed to the price rise in the scrip of Netvista. The SCN, therefore, alleged that the acts of Rajiv Samani were in violation of Regulations 4(b) of 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') as applicable at the relevant point of time. It was alleged that Rajiv Samani has violated the provisions of Rule 8(1)(f) of Securities Contracts (Regulation) Rules, 1957 and Section 2(i) of Securities Contracts (Regulation) Act, 1956.

As regards, noticees namely Panache, Panraj and Ms. Bela Kamdar, it was alleged that they had aided and abetted Rajiv Samani in creating the said

misleading appearance of trading in the scrip of Netvista, in violation of Regulation 4(b) of PFUTP Regulations.

Accordingly, SCN called upon the noticees to show cause as to why action under Section 11(4)(b) of SEBI Act, including restraining them from accessing the capital market and prohibiting from buying, selling or dealing in the securities for a particular period should not be initiated against them.

4. Noticees namely Rajiv Samani, Panache and Panraj replied to the SCN vide their respective letters all dated April 30, 2004. No reply was received from Ms. Bela Kamdar. An opportunity of personal hearing was granted to the noticees on September 28, 2004. However, due to change in appropriate authority, another opportunity of personal hearing was granted to the noticees on January 17, 2006. None appeared for the noticees on this date of hearing. In the interests of justice, another opportunity of personal hearing was granted to the noticees on September 30, 2008. On the date fixed Mr. Rajiv Samani, Mr. V. Chandrasekhar, Advocate and Mr. K.J. Wagle, Advocate appeared and made submissions on behalf of noticees namely Rajiv Samani, Panache and Panraj. They also filed written submissions which were taken on record.
5. Due to change in appropriate authority another opportunity of personal hearing was granted to the noticees before me on September 10, 2009, in compliance of the principles of natural justice. However, noticees namely Rajiv Samani, Panache and Panraj vide their letters dated September 02, 2009, September 02, 2009 and September 09, 2009 respectively preferred to rely on their replies and written submissions filed in the matter.
6. I note that no reply was received from the noticee namely Ms. Bela Kamdar despite due service of SCN. It is seen that reminders were also issued to her but till date no reply has been received by SEBI. I also note that she has failed to avail the opportunity of personal hearing granted over the period of time in spite of due intimation of the same. Further, no communication is on

record from her for any adjournment. I have seen that sufficient opportunities have already been given to Ms. Bela Kamdar to explain her case. In view of this, I am compelled to proceed with the matter *ex-parte*, on the basis of material available on record, having complied with the principles of natural justice.

7. I have carefully considered the SCN, reply of noticees dated April 30, 2004 and the affidavit filed by the noticees during the hearing. I note the contentions of noticees who have replied to SCN are more or less common in nature, in brief these are:

- Preferential allotment was in accordance with the applicable provisions. The delay in making allotment of shares was on account of time taken for the tests of software. The delay was ratified at AGM held on December 23, 1999. The said ratification was also for holding the shares in trust by Rajiv Samani till successful completion of testing. Hence, shareholders were not kept in dark.
- The company intimated its then Registrar and Share Transfer Agent (hereinafter referred to as 'RTA') viz. Sharepro Services about the holding of 14,03,500 equity shares in trust by Rajiv Samani on behalf of Mr. Dattatraya Kadikar of RDK Computata Techniks vide its letter dated July 05, 1999.
- Shares transferred to RDK Computata Technik are 14,03,500 shares and not 13,03,500 shares.
- The misleading information was not given by the company to the exchange and the same was inadvertent mistake of one of the employees of company. The same was brought to the knowledge of exchange vide letter dated February 16, 2001.
- Was not the registered broker of NSE at the time of filing of prospectus and hence no disclosure was required in the prospectus dated April 05, 1995.
- Shares held by group investment companies were held in physical form and dematted in the compulsory demat scheme as per SEBI Guidelines.

- Mr. Atul Kamdar husband of Ms. Bela Kamdar came to his office and took 15,800 shares along with blank signed transfer deeds. Upon intervention of partner of MVB, consideration for these shares was received by him. The consideration ultimately came to his account on December 15, 1999.
- No cash withdrawal in any of personal or group companies account till August 27, 1999.
- Withdrawal of cash from the account of Panache and Panraj cannot be correlated with any cash deposit in the account of Jupiter Investments.
- Share transferred by Rajiv Samani were off-market and cannot be classified as an act to create misleading/ false appearance of trading on securities market.
- The SCN was issued to the Chairman and Managing Director of Netvista, although the allegation of violating SEBI Preferential Issue Guidelines, 2000, is against the company who has not been called to show cause by the present SCN.
- Transaction referred to pertains to a period ending on November 30, 1999, whereas Rajiv Samani got married to Ms. Deepti Samani only in December, 1999. Hence, Jupiter cannot be classified as associate of Rajiv Samani.
- Section 11(4) of SEBI Act could not be invoked as it came into force on October 29, 2002, whereas transactions took place prior to year 1999.
- Investigation was initiated in the year 1999 and the SCN has been issued after a gap of five years.
- Documents as asked for were not supplied. Only selective data has been provided with SCN.

8. At the outset, I note the contention raised by the noticees that they have not been supplied with the trade/ order logs and other relied upon documents. I note that all the relied upon documents have been provided to the noticees. However, I note that no document, which has not been provided to the noticees, is being relied upon in the present proceedings. Further, I note the argument of noticees that the allegations of violation of Guidelines for Disclosure and Investor Protection – Preferential Issues is against the

company and the SCN has been issued to Rajiv Samani. To this, I note that the SCN has been issued to Rajiv Samani in the capacity of Chairman & Managing Director of Netvista. Considering this, I observe that the company being a legal person is being represented by its Chairman and Managing Director. Having considered this, the issue arises for my consideration are:

- a. Whether Netvista contravened the provisions of Guidelines for Disclosure and Investor Protection and Securities Contracts (Regulation) Rules, 1957?
- b. Whether Rajiv Samani had created misleading appearance of trading in the scrip of Netvista, with the help of Panraj, Panache and Jupiter?

My findings on these issues are as under:

9. Whether Netvista had contravened the provisions of Guidelines for Disclosure and Investor Protection and Securities Contracts (Regulation) Rules, 1957?

- a. I note that Rajiv Samani was a registered broker of NSE since October, 1994, the membership was surrendered by him sometime in February, 1998 and the same was accepted by NSE in July, 1998. It is observed from the prospectus of Netvista dated April 05, 1995, of which Rajiv Samani is the Chairman and Managing Director that there is no disclosure about his being a registered NSE member at the time of issuance of prospectus. I consider this fact about Rajiv Samani material and the same should have been disclosed by Netvista in its prospectus. As per the provisions of Securities Contracts (Regulation) Rules, 1957, Rajiv Samani being a registered member of NSE, should not have engaged in any other business except as a broker. Considering this, I find Rajiv Samani guilty on this count. Further, it is also concluded that Netvista concealed material information in its prospectus.
- b. I observe that Netvista in its EOGM held on March 30, 1999, passed a resolution for issuance of shares for raising additional capital. Further, in the meeting of Board of Directors held on July 02, 1999, the resolution of

allotment of 14,03,500 shares of Netvista to RDK Computata Techniks in lieu of transfer of Intellectual Property Rights 'Humansoft' software was approved.

As per Guidelines for Disclosure and Investor Protection – Preferential Issues, as applicable at the relevant point of time, the allotment of shares was required to be completed within three months from the date of passing of resolution. As noted above the date of resolution was March 30, 1999. In view of this, the allotment had to be completed by June 30, 1999. However, the allotment as discussed above had been made on July 02, 1999 i.e. after a delay of two days in violation of the said Guidelines.

The noticees have argued that the allotment was delayed due to rigorous tests of the software. I find this argument of noticees weak as for testing of software and proper implementation, Rajiv Samani had already made due arrangements as the shares so allotted to RDK Computata Techniks were held by Rajiv Samani, on trust on behalf of RDK Computata Techniks, till the date, the software product supplied by them becomes fully operational. In view of the same, I am of the considered view that Netvista had completed the process of allotment of shares after the time prescribed by the Guidelines.

10. Whether Rajiv Samani created misleading appearance of trading in the scrip of Netvista, with the help of Panraj, Panache and Jupiter?

I note that Rajiv Samani transferred the shares of Netvista to various entities as detailed in SCN. The same has also been bought out below for consideration:

Table - A

S. No.	Date	Transferred from	Transferred to	Quantity
1.	03/04/1999	Rajiv Samani	Panraj	3,05,060
2.	16/10/1999	Rajiv Samani	Panache	13,03,500*
3.	02/10/1999	Rajiv Samani	N.J. Joshi	1,00,000
4.	11/12/1999	Demat account of Panraj	Goldcrest Exports	1,26,000
5.	18/11/1999	Panache	Jupiter Investments	15,000
6.	Early 1999	Rajiv Samani	Jupiter Investments	2 to 3,000

**Shares subsequently transferred to Dattatraya Kadikar of RDK Computata Techniks on February 01, 2000.*

I have seen the allegations leveled in the SCN that these shares transferred by Rajiv Samani were later on used for creating misleading appearance of trading in the scrip of Netvista, through related entities. For due consideration of charges, I am discussing these under separate heads as pointed in SCN.

a. Dealings with Jupiter:

I note that Panache and Panraj while trading through brokers namely MVB, Goldcrest Capital Markets Ltd., Jayantilal Khandwala and Khandwala Finance Ltd. had together purchased 42,437 shares and sold 3,43,574 shares of Netvista, thereby contributed a total volume of 3,86,011 shares in the scrip. From the said sale of shares Rajiv Samani had received an amount of ₹1,42,78,109 (after deducting the purchase consideration). It is seen that Rajiv Samani and his group companies were making regular withdrawals from their accounts. As detailed in the SCN, these withdrawals by Rajiv Samani and group were credited in cash in the bank account of Jupiter, during January 06, 1999 to March 08, 2000. It is seen that Jupiter in turn had paid this money to various entities related to MVB. I have seen the tables as brought out in the SCN, in support of this allegation. Considering these, I note that on one side the detail shows withdrawal of money from the accounts of Rajiv Samani and his group companies. On the other side, it is seen that the payments were being made to third parties by Jupiter.

For proving the charge, it is necessary to see the crucial link between these transactions that as to from where the money was being credited into the account of Jupiter. The details in the SCN do not discuss about this link. Having considered this, I note that from the available details, it is difficult to conclude that the cash deposits in the account of Jupiter were made by Rajiv Samani and his group companies for the following main reasons:

- The dates mentioned for payment by Jupiter are mostly before the investigation period.
- Corresponding dates of withdrawal and deposits have not been provided.

- Corresponding details of deposits are not matching.
- Total amount deposited and withdrawn is not matching.

Further, from the tables as given in the SCN, I note that an amount of ₹15,86,117 was found to have been withdrawn as from the accounts of Rajiv Samani and his group companies, which represents only 16.5% of the total cash deposited in the account of Jupiter and that too the dates of withdrawal and deposit are far apart. Further, it is not clear as to how the payments made by Jupiter were not valid and were the financing transactions to the clients of MVB. As regards the instances of payment to Mr. Shah Rupesh Jawahar and National Enterprise, it is not clear as to how this corroborates with the trading in the scrip of Netvista. In absence of the above said details the charge leveled against Jupiter can not be proved. Therefore, I am of the considered view that the noticees are entitled to a benefit of doubt on this count.

b. Dealings between Panache and Jupiter

I note that Jupiter was continuously buying and selling the shares of Netvista in the market. It sold more shares than what it had purchased during the relevant period. As detailed, for the sales effected during November 03, 1999 and November 16, 1999, Jupiter had to deliver 15,800 shares of Netvista on BSE and NSE. Rajiv Samani in his statement dated November 22, 2002 before the Investigating Authority had stated that he entered in an off-market deal of 15,000 shares with Jupiter through MVB. However, later on noticees vide their replies have stated that the number of the said shares were 15,800 shares, which were transferred from Panache to Jupiter.

Noticees have also contended that Atul Kamdar, husband of noticee namely Bela Kamdar came to the office of Rajiv Samani and in his absence took 15,800 shares of Netvista, alongwith blank signed transfer deeds. Pursuant to

this, upon consistent efforts and intervention of MVB, he finally received the consideration of these shares on December 15, 1999.

Having seen these details, I note that it is not clear as to on which date the shares were transferred by Rajiv Samani. Without this crucial information the charge of violating the provisions of spot delivery contract as stated in Section 2(i) of Securities Contracts (Regulation) Act, 1956 cannot be crystallized as against the noticees.

c. Dealings with Goldcrest Capital Markets Ltd.

It is seen that Goldcrest Export Ltd., a company of Tushar Tanna (a family friend of Rajiv Samani) had purchased 1,26,000 shares on BSE through broker Vikram Kenia Sec. Pvt. Ltd. on November 19, 1999 and sold these shares on the very same day through Goldcrest Capital Markets Ltd. (another company of Tushar Tanna) on NSE. This transaction accounted for a volume of around 30% on NSE and 41.2% at BSE for the said day in the scrip. As the scrip was in 'No delivery', the pay out of these shares had to happen on December 28, 1999, therefore, for meeting the delivery obligation Goldcrest Capital Markets Ltd. received 1,26,000 shares in demat form, from Panraj.

Noticees contended that the shares were transferred on the request of Tushar Tanna, whereby he urged the intervention of Rajiv Samnai for getting the shares demated at the earliest with the RTA. Tushar further requested Rajiv Samani for exchange of physical shares with the demat shares. Because of family relation, Rajiv Samani agreed for exchange of physical shares with demat shares on payment of demat charges. Noticees further contended that the physical shares so received were demated in the name of Panraj. Considering the explanation and the record available, I find this transaction between Panraj and Goldcrest Exports Ltd. is solely an arrangement and the same cannot be said to be an arrangement for creating volumes in the scrip of Netvista.

11. Having considered the above discussion, I am of the view that the charge of violating the provision of Securities Contracts (Regulation) Rules, 1957 and Guideline 10 of Guidelines for Disclosure and Investor Protection – Preferential Issues (as applicable at the relevant point of time) stands proved as against the noticee namely Rajiv Samani as the SCN has been issued to him in the capacity of Chairman & Managing Director of Netvista.
12. As regards the contention of noticees that Section 11(4) of SEBI Act could not be invoked as against them, I place my reliance on the order of Hon'ble Supreme Court of India in the matter of *SEBI Vs. Ajay Agarwal*, wherein Hon'ble Court while dealing with the applicability of Section 11B of SEBI Act, held that the provisions of Section 11B being procedural in nature can be applied retrospectively. Further, Hon'ble Court considered that if the law affects matters of procedure, then *prima facie* it applies to all actions, pending as well as future. Considering this, I find no merits in the argument of noticees.
13. As regards delay, I note that there is no time limit on disposal of a proceeding of this nature nor the delay can justify exoneration.
14. I note that the SCN could not sufficiently prove the allegation leveled against the noticees namely Panraj, Panache and Jupiter of aiding and abetting Rajiv Samani. Therefore, I am of the considered view that these are entitled to a benefit of doubt.
15. Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act read with Section 11(4)(b) of SEBI Act, 1992, do hereby issue the following directions:
 - a. Mr. Rajiv Samani (PAN: BPKPS 6949Q) be restrained from buying, selling or dealing in securities and from associating in securities market in any manner whatsoever for a period of six months from the date of this order.

- b.** Dispose of the show cause notice issued to Panraj Financial Services Pvt. Ltd., Panache Securities Pvt. Ltd. and M/s Jupiter Investments without any directions.
- 16.** The stock exchanges are hereby directed to permit the respective members to square off his existing open positions, if any, at the earliest in Futures and Options segment.
- 17.** This order shall be served on all recognized stock exchanges and depositories to ensure that the noticees as named above are not allowed to undertake transactions as prohibited in Para 15 above.
- 18.** This order shall come into force with immediate effect.

DATE : 29/OCT/2010
PLACE : MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA