

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

ORDER

DIRECTIONS UNDER SECTIONS 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 IN THE MATTER OF ACCURATE EXPORTS LIMITED

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) issued a notice dated April 20, 2005 to Accurate Exports Limited (hereinafter referred to as the Company) and its directors/former directors namely, Mr. Hemant Gupta, Mr. Dinesh Sharma, Mrs. Meeta Kapoor, Mr. Vijay Dinanath Khanduja and Mr. Dinanath Khanduja advising them to show cause as to why action under Sections 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act) should not be initiated against them in respect of the alleged violation of Regulation 6(a) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as the PFUTP Regulations). Similar notices were also sent to Mr. Pradeep Kapoor (husband of Mrs. Meeta Kapoor) and Sanidhya Holiday Resorts and Estate Development Limited (hereinafter referred to as Sanidhya Resorts). Brief facts as mentioned in the said show cause notices (hereinafter referred to as the notices) are given below.

2. The investigation conducted by SEBI in respect of the buying, selling and dealing in the shares of the Company observed that during the period from January 1, 2001 to March 31, 2002, the price of the scrip ranged between ₹2 to ₹0.10 at a time when substantial quantity of shares of the Company was offloaded through select stock brokers. It was further observed that the Company had issued two different notices dated April 3, 2001 signed by the Managing Director, Mr. Dinesh Sharma, calling for an Extra-Ordinary General Meeting (EGM) on April 30, 2001. The following proposals were made in the first notice:

- I. An increase in authorised capital from ₹25 crores to ₹156 crores, divided into 15.60 crore equity shares of ₹10 each
- II. To issue 15.60 crore preferential shares on a swap basis in proportion to 10 shares of the Company for every one share held by the shareholders of Sanidhya Resorts .
- III. Resolution to invest in the equity shares of Sanidhya Resorts on swap basis to acquire total shareholding in the said companies and
- IV. Shifting of registered office of the Company from Ahmedabad to Vadodara.

The proposals of the second notice were:

- i. Increase in authorised capital from ₹25.00 crores to ₹81.00 crores, divided into 8.10 crore equity shares of ₹10 each
- ii. To issue 6 crore preferential shares on a swap basis in proportion to 10 shares of the Company for every one share held by the shareholders of Sanidhya Resorts
- iii. Resolution to invest in the equity shares of Sanidhya Resorts on swap basis to acquire total shareholding in the said Company

3. However, it was observed from the certified true copy of the resolution passed in the EGM held on April 30, 2001, as submitted by the Company to the Ahmedabad Stock Exchange Limited (ASE), that the only resolution passed in

the said EGM was regarding the shifting of office to Vadodara. In spite of the resolution not being approved, on May 11, 2001 and September 11, 2001, the Company had made a listing application to ASE for listing of 6,00,00,000 equity shares and 7,50,00,000 equity shares of ₹10 each respectively. Subsequently, vide letters dated September 19, 2001 and September 24, 2001, the Company had written to ASE informing that the said allotments were null and void as various regulatory compliances under the SEBI Act and the Companies Act 1956 had not been met. However, substantial quantity of shares had been dematerialised and transferred to various entities during the period between the preferential allotment and the application for listing. The shares issued by the Company were dematerialized by the allottees who then transferred those shares to certain other entities and they in turn, transferred the shares to other set of entities who offloaded the same in the market, without the shares being listed on the stock exchange. Thus, it was alleged that the Company had fraudulently issued and dematerialized shares over and above its authorized capital of 2,10,00,000 shares.

4. In reply to the notice, the Company, vide letter August 28, 2005 stated that it had gone in for Voluntary Liquidation by a special regulation passed on December 30, 2004. It was further stated that Mr. Vijay Dinanath Khanduja and Mr. Dinanath Khanduja were its directors only for a period from December 20, 2000 to February 23, 2001 and that they were not its directors during the relevant period. The Company further stated that Mrs. Meeta Kapoor had also resigned from directorship of the Company. According to the Company, the notice against the Company and against its directors, Mr. Vijay Dinanath Khanduja, Mr. Dinanath Khanduja and Mrs. Meeta Kapoor was unwarranted and therefore, requested to kindly drop the proposed action as mentioned in the notice. Mr. Vijay Dinanath Khanduja, Mr. Dinanath Khanduja and Mrs. Meeta Kapoor were granted an opportunity of personal hearing on October 23, 2008.

Though, they had requested to grant eight weeks time to file consent applications, they had failed to file consent application, as informed to SEBI. Therefore, another opportunity of personal hearing was granted on July 15, 2009. Subsequently, the entities applied for consent. On rejection of their consent applications, another opportunity of personal hearing was granted to them on April 29, 2010. The entities have failed to appear for the hearing on the said date. Thereafter, in a hearing scheduled on September 21, 2010, Mr. S.S. Deshmukh appeared and made submissions on behalf of Mr. Vijay Dinanath Khanduja, Mr. Dinanath Khanduja and Mrs. Meeta Kapoor on the lines of the reply of the Company dated August 28, 2005.

5. In the notice issued to Mr. Pradeep Kapoor, it was alleged that he had dematerialized 51,00,000 shares of the Company on Central Depository Services (India) Limited (CDSL) and another 11,40,000 shares on National Securities Depositories Limited (NSDL) and that he had further demat request pending on CDSL as on September 2001 for 60,00,000 shares and that the dematerialized shares were transferred to various entities. As he had earlier submitted that he did not purchase shares of the Company on the stock exchange and denied being allotted any preferential allotment and had received 30,00,000 shares from an individual in physical mode, the subsequent dematerialization of 62,40,000 shares lead to an inference that shares were issued fraudulently to him when his wife Mrs. Meeta Kapoor was a director in the Company. Mr. Pradeep Kapoor was alleged to have colluded with various persons in dematerializing and transferring shares of the Company which were fraudulently allotted. In his reply, Mr. Pradeep Kapoor had contended that his wife, Mrs. Meeta Kapoor was a director in the Company only upto February 23, 2001 and that she was not a director when the Company had made a preferential allotment in the month of May 2001. He admitted having dematerialized 62,40,000 shares and submitted that he did not have complete

books of account and therefore the receipt of 62,40,000 shares from the allottees in physical mode was not included in the information furnished to SEBI. I also note that Mr. Pradeep Kapoor had filed an application for passing of a consent order and pursuant to the rejection of the said application, the present proceeding was resumed. He was afforded an opportunity of hearing on September 21, 2010, when Mr. S.S. Deshmukh, Advocate, who made submissions on the lines of the aforesaid reply. The notice issued to Sanidhya Resorts had alleged that the said entity had dematerialized 3,30,00,000 shares of the Company as on May 31, 2001 which were then transferred to various entities and that the entity had a pending demat request for 3,00,00,000 shares as on September 2001. The notice also mentioned that the entity had earlier submitted that it had received 3,00,00,000 shares on May 11, 2001 through a preferential allotment on swap basis on account of its takeover. Since the Company had written to ASE that its allotments were null and void on account of not meeting with the statutory requirements, the dematerialization and transfer of 3.3 crore shares and the source of 3 crore shares not being disclosed by the said entity, were the basis to allege in the notice that Sanidhya Resorts had colluded with various parties to off-load shares that were fraudulently issued and dematerialized in contravention of Regulation 6(a) of the PFUTP Regulations. The notice had also mentioned that the address of Sanidhya Resorts was the same as that of Mrs. Meeta Kapoor and the authorized signatory was Mr. Dinanath R. Khanduja, one of the directors of the Company. The said entity failed to appear in the various opportunities of personal hearing and finally on September 21, 2010, Mr. S.S. Deshmukh advocate represented the entity and made submissions on the lines of the aforesaid reply.

6. I have considered the notices issued to the Company, its directors, Mr. Pradeep Kapoor and Sanidhya Resorts, the replies of the Company, Mr.

Pradeep Kapoor and Sanidhya Resorts, the oral submissions made on behalf of the concerned parties during the course of hearing and other material available on record. The allegation against the Company and the persons said to be its directors in the notice, in brief, is as follows:

"From the above, it is clear that AEL had fraudulently issued and dematerialized shares over and above its authorized capital that are said to be allotted in a preferential allotment, which was not approved by EGM of AEL and moreover, there was no actual receipt of allotment money. These shares were later transferred to various entities and sold in the market without listing on the Exchanges. Thus, you (the company and its then directors) have violated Regulation 6(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 as referred below....."

"You had also not complied with the summons issued to you and thereby violated Section 11C(6) of SEBI Act, 1992"

7. Before proceeding further, it is very important to note that the Company has not disputed the facts of the case. It is the case that the Company, without getting any approval from the EGM on April 30, 2001, had fraudulently issued and dematerialized around 13 crore shares in excess of its authorized capital of 2.1 crore shares. The list of those entities who had dematerialized more than 10,00,000 shares of the Company was mentioned in the notice. The list includes Mr. Vijay Dinanath Khanduja, Mr. Dinanath Khanduja and Mrs. Meeta Kapoor, who were alleged to be the directors of the Company, and also Mr. Pradeep Kapoor (husband of Mrs. Meeta Kapoor) and Sanidhya Resorts. The notice mentioned that despite the fact that the Company had not obtained shareholders approval, the Company had made listing applications to ASE on May 11, 2001 (in respect of 6,00,00,000 shares) and September 11, 2001 (in respect of 7,50,00,000 shares). The very fact that the Company had went ahead to allot shares on preferential basis without the approval of the shareholders, which was in excess of its authorized capital, would indicate that

its action was not bonafide. It was also alleged that the allotment of shares was without the receipt of allotment money. It was only on September 19, 2001 and September 24, 2001, the Company had written to ASE informing that the aforesaid allotments were null and void as various regulatory compliances under the SEBI Act and the Companies Act 1956 had not been complied with. The relevant portion of the letter dated September 19, 2001 is extracted below:

"We have submitted on May 11, 2001 an application for seeking the permission of the stock exchange for enlistment of 6,00,00,000 equity shares of `10/- each allotted to the shareholders of Sanidhya Holiday Resorts & Estate Developers Limited on preferential allotment basis (SWAP).

The application made by the company is pending for confirmation of the various requirements of the provisions of SEBI Guidelines.

On review, we are advised that our application cannot survive due to following reasons:-

1. Neither we nor Sanidhya Holiday Resort & Estate Developers Limited had complied with provisions of Section 372A of the Companies Act, 1956 for subscription of the shares.
2. The purpose for issue of the shares was not disclosed in the resolution as required. On verification, it has also been revealed that Sanidhya Holiday Resorts & Estate Developers Limited being an closely held public limited company was also required to pass such a special resolution u/s 372A. As the same has not been done, the subscription of our shares by them is without any authority and because of these legal latches, the allotment of the shares fails.
3. Inadvertently, the consideration received against the allotment has been mentioned as `60.00 crores instead of `60.00 Lacs on this ground also, the resolution passed u/s. 81 and the consequential allotment becomes ineffective and null and void.
4. Due to the allotment of 6 crore shares on May 11, 2001 the requirements as to the non-transferability of the shares held by the promoters are not satisfied. The Certificate of the Chartered Accountant was obtained on May 25, 2001. It may please be appreciated that the C.A. Certificate is

required to be laid before the Extra Ordinary General Meeting in terms of the SEBI Guidelines. This has also not been done. The non-compliance of SEBI Guidelines on preferential issue, undoubtedly vitiates the whole issue resulting into nullifying the allotment of shares.

5. In view of the factual and legal position, we are advised that in order to regularize the irregularities, the application made to the stock exchanges for enlistment are to be withdrawn.

6. Accordingly, we request you to kindly allow us to withdraw the application or the same may be treated as withdraw. A copy of the Board Resolution authorizing the withdrawal is enclosed herewith.

A line of confirmation in the matter shall be highly appreciated."

8. It is to be noted that about 6,00,00,000 shares of the Company were dematerialized on May 31, 2001 itself. As a matter of fact, Mrs. Meeta Kapoor, Mr. Vijaykumar Dinannth Khanduja and Mr. Hemant Gupta (directors of the Company) had dematerialized 41.50 lakh, 35 lakh and 17.50 lakh shares respectively. The shares were subsequently transferred to various entities some of whom in turn transferred those shares off market to another group of entities who off loaded the shares in the market. It is pertinent to note that there was no approval from the shareholders in respect of the allotment. By doing so, the Company had committed fraud on its shareholders and the securities market in general. It was only in the month of September, 2001, the Company had written letters to BSE stating inter alia that

"6. Neither we nor Sanidhya Holiday Resort & Estate Developers Limited had complied with provisions of Section 372A of the Companies Act, 1956 for subscription of the shares.

7. The purpose for issue of the shares was not disclosed in the resolution as required. On verification, it has also been revealed that Sanidhya Holiday Resorts & Estate Developers Limited being an closely held public limited company was also required to pass such a special resolution u/s 372A. As the same

has not been done, the subscription of our shares by them is without any authority and because of these legal latches, the allotment of the shares fails.”

Thus, the Company had itself admitted that it had not complied with various regulatory requirements in respect of the allotment. In view of the above, it is established that the above acts of the Company are clearly in violation of Regulation 6(a) of the PFUTP Regulations. The same amounts to fraud. It is the submission that the Company is under liquidation. However, the Company had not provided any documents in support of the said submissions. Further, in the website of the Ministry of Corporate Affairs, the status of the Company is shown as ‘dormant’ and the Company did not appear in the list of companies under liquidation maintained by the Registrar of Companies, Ahmedabad. The directors of the Company who were in charge and were responsible for the affairs of the Company during the period when the Company had allotted shares on preferential basis have also to be held responsible for the violations committed by the Company. The contention of the Company was that Mr. Vijay Dinanath Khanduja and Mr. Dinanath Khanduja were its directors only for a period from December 20, 2000 to February 23, 2001. The notice for EGM was dated April 3, 2001. Since, according to the Company, Mr. Vijay Dinanath Khanduja and Mr. Dinanath Khanduja were its directors till February 23, 2001, they cannot be held responsible for the acts committed by the Company, thereafter. It was also stated that Mrs. Meeta Kapoor had resigned from the Company. Therefore, I find the directors, Mr. Dinesh Sharma and Mr. Hemant Gupta responsible for the aforesaid conduct of the Company and are liable for violating Regulation 6(a) of the PFUTP Regulations. Though, Mrs. Meeta Kapoor and Mr. Vijaykumar Dinanath Khanduja have been afforded the benefit as they were not the directors of the Company during the period when the Company had fraudulently allotted excess shares than its authorized capital, I find them guilty of contravening the provisions of Regulation 6(a) of the PFUTP

Regulations as they had been the recipients of the impugned shares and had dematerialized and transferred them to others. Their contention was that they had resigned prior to the EGM which had called for considering various proposals as stated above. Even if, they had resigned, it cannot be believed that they were unaware of the capital of the Company. In so far as the violation of Section 11C(6) of the SEBI Act, I note that the notice did not provide any details of such violation apart from making the allegation. Therefore, the entities are entitled for a benefit of doubt in respect of the said charge.

9. Having established that the Company had fraudulently allotted shares, I proceed to consider the charges leveled against Sanidhya Resorts and Mr. Pradeep Kapoor, both of whom were alleged to have received the fraudulently allotted shares and have transferred them to various other entities. Sanidhya Resorts has admitted that the Company had allotted 3.30 Crores shares to it through preferential allotment on swap basis, which were dematerialized by it. According to the entity, it had dematerialized the said shares and then transferred it to various entities during the normal course of business. The entity further stated that at the time of dematerialization and the transfer of shares it was not aware of the fate of allotments and therefore it cannot be blamed and held responsible for the irregularities in the allotment of shares due to non compliance of the various requirements. The facts of the case are not in dispute. The allegation is that the Company had allotted shares in excess of its authorized capital. It had dematerialized 3.3 crore shares and had transferred the same to various entities. This is also not in dispute. Sanidhya Resorts is an associate of the Company. Though, it is contended by the entity that it was for the Company to ensure that the increase in the subscribed capital was within the limit of its authorized capital, it is to be noted that the entity had a close connection with the Company, as stated in the notice. The authorized signatory of the entity was Mr. Dinanath R. Khanduja, who was none other than the

managing director of the Company. Further, the address of the entity was the same as that of Mrs. Meeta Kapoor, daughter of Mr. Dinanath R. Khanduja. The Company had itself admitted that it had not received the full consideration. Further, as stated above, the Company had written to BSE, inter alia, the following:

8. "The purpose for issue of the shares was not disclosed in the resolution as required. On verification, it has also been revealed that Sanidhya Holiday Resorts & Estate Developers Limited being an closely held public limited company was also required to pass such a special resolution u/s 372A. As the same has not been done, the subscription of our shares by them is without any authority and because of these legal latches, the allotment of the shares fails."

Considering the above circumstances, I do not have any hesitation to hold that Sanidhya Resorts was part and parcel of the entire scheme, which received the shares and transferred it to various entities. Thus, its acts are in violation of Regulation 6(a) of the PFUTP Regulations.

10. The allegation against Mr. Pradeep Kapoor was that he had colluded with various parties to offload shares which were fraudulently issued and dematerialised by the Company in excess of its authorized capital. It was further alleged that, he had fraudulently issued shares on his name when his wife, Mrs. Meeta Kapoor was the director of the Company and then dematerialized and transferred them to various entities for offloading it in the market. There in no allegation in the notice that Mr. Pradeep Kapoor was a director of the Company at the relevant point of time. Further, the notice does not have an allegation that Mr. Pradeep Kapoor was an allottee. Mr. Pradeep Kapoor had submitted that his wife had resigned from the Company before the preferential allotment during May 2001. The notice issued to him has stated that he had dematerialized 62,40,000 shares of the Company and that he had a further demat request pending on CDSL as on September 2001 for 60,00,000

shares. He, therefore, had a total of 1.24 crore shares of the Company during the relevant period. His holding seen against the authorized capital of 2.1 crore shares is a very substantial holding by an individual. The same further supports the inference that he had received the excess shares that were issued by the Company. I note the submission that since he did not have complete books of account, he had not informed SEBI of the receipt of 62,40,000 shares from the allottees in physical mode. It is his own admission that he had received the said shares from allottees. Given his position as the husband of Mrs. Meeta Kapoor, who was a director and who had dematerialized shares and transferred the same to various persons, I find that the circumstances lead to the preponderance of probability that Mr. Pradeep Kapoor was aware of the fraudulent activities committed by the Company and had colluded in off-loading the same therefore, I have no hesitation in holding him also guilty of contravening Regulation 6(a) of the PFUTP Regulations. The alleged violations took place in the year 2001. Considering the case in its totality, the interest of justice would be served if the parties are penalized as ordered below.

11. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(4) and 11B thereof and Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 hereby issue the following directions:

- a. Accurate Exports Limited and its directors, Mr. Dinesh Sharma and Mr. Hemant Gupta are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities in any manner for a period of two months.

- b. Sanidhya Holiday Resorts and Estate Development Limited, Mr. Pradeep Kapoor, Mrs. Meeta Kapoor and Mr. Vijaykumar Dinanath Khanduja are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities in any manner for a period of one month.
 - c. The proceedings initiated against Mr. Dinanath Khanduja vide the show cause notice dated April 20, 2005 is disposed of without any directions, for the reasons stated above.
12. 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 19, 2011