

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.: SRP/RK/AO- 67/2010]**

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**UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005**

*In respect of*

**Mr. Bhanuprasad Dipakkumar Trivedi**

(PAN – ABTPT6882D)

**In the matter of IPO Investigations**

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**BACKGROUND IN BRIEF**

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an examination into the affairs relating to buying, selling and dealings in the shares of Infrastructure Development and Finance Co. Ltd. (IDFC Ltd.) during its Initial Public Offering (hereinafter referred to as ‘**IPO**’).
2. From the examination, it prima facie appeared that Mr. Bhanuprasad Dipakkumar Trivedi (hereinafter referred to as “**Noticee**”) has entered into off-market transactions with Ms. Roopal Panchal in the shares of IDFC Ltd., during its IPO, which were not of the nature of ‘spot delivery contract’ as defined under section 2(i) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as ‘**SCRA**’). Therefore, it was alleged that the Noticee has violated the provisions of SEBI Notification No. G.S.R. 219(E) dated March 2, 2000 issued under section 16 of SCRA and section 13 read with section 18 of SCRA.

**APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned has been appointed as the Adjudicating Officer vide order dated August 7, 2009 under section 23I of SCRA read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 2005 (hereinafter referred to as the ‘**Rules**’) to inquire into and adjudge under section 23H of SCRA,

the alleged violation of the provisions of section 16 of SCRA and section 13 read with section 18 of SCRA.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. Show Cause Notice No. EAD-1/SRP/RK/173457/2009 dated August 17, 2009 (hereinafter referred to as 'SCN') was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry be not initiated against him in terms of rule 4 of the Rules read with Section 23 I of SCRA for the alleged violation of the provisions of SEBI Notification No. GSR 219(E) dated March 2, 2000 issued under section 16 of SCRA and section 13 read with section 18 of SCRA and penalty be not imposed under section 23H of SCRA.
5. The Noticee, vide letter dated February 23, 2010 submitted his reply to the SCN. In his reply the Noticee, inter alia, submitted as under:
  - On or about 10.08.2005, before the day of listing of shares of IDFC Ltd., the Noticee entered into a contract with Ms. Roopal Panchal, by which it was agreed that the Noticee would purchase 11 lakh shares of IDFC Ltd. at the rate of Rs.35.50 per share, i.e. for a total consideration of Rs.3,90,50,000/-.
  - The shares were credited into the demat account of the Noticee on August 13, 2005 and after the receipt of the said shares, the Noticee, in part payment of purchase consideration, paid Rs.3,74,00,000/- to Ms. Panchal on the same day. The balance purchase consideration for the said shares, i.e., Rs.16,50,000/-, was paid in 3 installments by cheques in the month of June 2006. The Noticee has relied upon the relevant Bank Account Statements to show that he has paid Rs.3,90,50,000/- to Ms. Panchal.
  - The Noticee has also submitted that the aforesaid payments are duly reflected and disclosed in his income tax records and he has paid the required taxes in respect of his said transactions.
  - The Noticee has stated that he has not violated any of the provisions of SCRA while transacting in the shares of IDFC Ltd. during its IPO. He has submitted that the provisions of sections 13, 16 and 18 of the SCRA relate to the date when the relevant "contract" was entered into and not the date of the delivery of shares or the date of payment for the same. Consequently, these provisions do not apply to the impugned contract entered into on August 10, 2005, as on that date the shares of IDFC Ltd. were not listed on any recognized stock exchange.

6. An opportunity of hearing was granted to the Noticee on March 19, 2010 vide Notice dated March 4, 2010. However, vide e-mail dated March 11, 2010 the Noticee requested to reschedule the hearing. Accordingly, the hearing was rescheduled to March 25, 2010. The authorized representatives of the Noticee, namely, Mr. Pesi Modi – Advocate and Ms. Poonam Gadkari – Advocate appeared on behalf of the Noticee for hearing and reiterated the submissions made vide reply dated February 23, 2010.

### **CONSIDERATION OF ISSUES AND FINDINGS**

7. I have carefully perused the material available on record and the oral and written submissions made by the Noticee. Before proceeding further it will be appropriate to succinctly state the facts relevant to the present inquiry. On the basis of documents filed before the Hon,ble SAT in Appeal No. 53/2009 and other materials available on record, it is observed that the shares of IDFC Ltd. were listed on the stock exchange on August 12, 2005 and the Noticee received 11 lakh shares of IDFC Ltd. on August 13, 2005 in his demat account (client id:10147757) in an off-market deal entered into with Ms. Roopal Panchal. The Noticee had purchased these shares for a total consideration of Rs.3,90,50,000/-. He paid Rs.3,74,00,000/- towards purchase consideration of the said 11 lakh shares to Ms. Panchal on the same day vide cheque No. 148688, and the balance of Rs.16,50,000/- was paid by three cheques issued in the month of June 2006. The details are as under:

<b>Date of payment</b>	<b>Amount (in Rs.)</b>	<b>Cheque drawn on</b>
August 13, 2005	3,74,00,000	HDFC Bank
June 5, 2006	1,00,000	Centurion Bank of Punjab
June 8, 2006	8,50,000	Centurion Bank of Punjab
June 9, 2006	7,00,000	Centurion Bank of Punjab
<b>Total</b>	<b>3,90,50,000</b>	

8. On the basis of above, it has been alleged that the Noticee has entered into off-market transactions with Ms. Roopal Panchal in the shares of IDFC Ltd., during its IPO, which were not in the nature of 'spot delivery contract' as defined under section 2(i) of SCRA and therefore he has violated the provisions of SEBI Notification No. G.S.R. 219(E) dated March 2, 2000 issued under section 16 of SCRA and section 13 read with section 18 of SCRA.
9. In his submissions, the Noticee has reiterated the aforesaid facts. He has further stated that the 'contract' for the aforesaid share purchase was entered into on August 10, 2005 and the purchase consideration for the aforesaid off market transaction was paid in part on the date when shares were transferred in his demat account, i.e., on August 13, 2005, and the rest in

the month of June 2006. However, he has contented that he has not violated any of the provisions of SCRA while transacting in the shares of IDFC Ltd. during its IPO. He has submitted that the provisions of sections 13, 16 and 18 of the SCRA relate to the date when the relevant 'contract' was entered into and not the date of the delivery of shares or the date of payment for the same. Consequently, these provisions do not apply to the impugned contract entered into on August 10, 2005, as on that date the shares of IDFC Ltd. were not listed on any recognized stock exchange.

10. The Noticee has not been able to provide any documentary evidence to support his claim that the contract for purchase of shares was entered into on August 10, 2005. Therefore, considering facts and circumstances of the case, I am of the view that there was no such contract on August 10, 2005. Further, even if it is accepted, for the sake of argument, that the contract was entered into before the date of listing, there are a number of decision which support the view that the provisions of SCRA would be applicable to contracts in securities of public limited company even though its shares might not be listed on any recognized stock exchange. In this regard it is pertinent to refer to decisions of Hon'ble High Court of Calcutta in the matter of *Bhagwati Developers Private Limited v Peerless General Finance & Investment Co. Ltd. and Another* (2003 INDLAW CAL 223; order dated July 30, 2003).
11. In *Bhagwati Developers Case*, the Hon'ble Calcutta High Court upheld the finding of the Company Law Board that the transaction between Bhagwati and Tuhin can not be termed as 'spot delivery contract' as defined in Section 2(i) of SCRA. The observations are as under:

"The Company Law Board found, as findings of fact, that the provisions of the Securities Contracts (Regulation) Act, 1956 would be applicable to public limited company even though it's shares might not be listed on any recognised stock exchange. It was, further, held that it was obvious that the part of consideration for the sale of shares passed on much after the date on which the sale of shares took place on October 30, 1987. The payment of Rs.10,00,000 (Rupees ten lakh) only by Bhagwati to Tuhin on November 21, 1994 was a part of consideration for the sale of the said shares and, further, it was agreed between the Bhagwati and Tuhin that Tuhin would be entitled to retain as absolute owner of the dividends on the entire shares including the bonus shares up to the accounting year 1989-90 as part of consideration. The transaction did not satisfy the definition of a spot delivery contract since part of the consideration passed on much after the transfer of shares on October 30, 1987. Moreover, the shares transfer forms were all dated November 21, 1994, that is, on the date on which the consideration of Rs.10,00,000 (Rupees ten lakh) only passed from the Bhagwati to Tuhin. Therefore, the transfer of shares in question was

hit by the provisions of the sections 13 and 16 of the Securities Contracts (Regulation) Act, 1956 and, therefore, was illegal, void and a nullity.”

12. In view of the above, I am of the opinion that the contention of the Noticee is without any merit. Further, there is no dispute over the fact that a part of the purchase consideration for 11 lakh shares were paid by the Noticee after a period of more than nine months from the date of delivery of shares in his demat account therefore, this transaction cannot be termed as spot delivery transaction in terms of section 2(i) of SCRA. Section 13 of SCRA makes a transaction in securities, in notified area, illegal, which is other than between the members of a recognized stock exchange or through or with such member. The effect of this provision is that if a transaction in securities has to be validly entered into, such a transaction has to be either between the members of a recognized stock exchange or through a member of a stock exchange or with a member of a recognized stock exchange. Section 18 of SCRA excludes spot delivery contracts from the applicability of section 13 of SCRA. Section 16 of SCRA read with notifications issued thereunder also prohibits contracts in securities, in specified area, other than spot delivery contract.
13. In the instant case, the shares have been purchased by the Noticee in off-market deal, i.e. outside the stock exchange mechanism, and the payment was made after a long gap of more than nine months i.e., not in conformity with the provisions of section 2(i) of SCRA. Therefore, the transaction of 11 lakh shares of IDFC Ltd. during its IPO was in contravention of the provisions of section 16 of SCRA and section 13 read with section 18 of SCRA.
14. The violations of the aforesaid provisions make Noticee liable to the penalty under section 23H of SCRA, which reads as under:

**Penalty for contravention where no separate penalty has been provided.**  
**23H.** *Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided ,shall be liable to a penalty which may extend to one crore rupees.*
15. In this regard, the provisions of Section 23J of SCRA and rule 5 of the Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely;
  - a) the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default.
  - b) the amount of loss caused to an investor or group of investors as a result of the default.
  - c) the repetitive nature of the default.

16. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I find that the Noticee has received shares without paying full consideration within 48 hours. In fact, final payment was made after a long gap of more than nine months. Therefore, considering the fact that a large number of shares (11 lakh) were involved in such dubious deals and that the shares were purchased outside the stock exchange mechanism in contravention of the provisions of law, I am of the view that the Noticee for its said acts of omissions and commissions should be suitably penalized. Considering the facts and circumstances of the case, I am of the view that a penalty of Rs.5, 00,000 on the Noticee shall be commensurate with the violations committed by it.

### **ORDER**

17. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs.5, 00, 000 (Rupees five lakh only) on the Noticee in terms of the provisions of Section 23 H of the Act for the violation of the provisions of sections 16 of SCRA and section 13 read with section 18 of SCRA.

18. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the Chief General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4 -A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.

19. In terms of the provisions of rule 6 of the Rules copies of this order are sent to the Noticee and to the Securities and Exchange Board of India.

**Date: April 29, 2010**  
**Place: MUMBAI**

**SATYA RANJAN PRASAD**  
**ADJUDICATING OFFICER**