WTM/MSS/ISD/10/09

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: M. S. SAHOO, WHOLE TIME MEMBER

IN THE MATTER OF DEALINGS BY MR. SHADILAL CHOPRA IN THE SHARES OF ATLANTA LIMITED

DATE OF HEARING: **June 23, 2009**

APPEARANCES:
FOR NOTICEE: Mr. Shadilal Chopra, Noticee
Mr. Sanjay Parekh, Authorised person
Mr. Prakash Shah, Advocate
Mr. Keyur Shah, Assistant to Advocate, and
Mr. Ajay Garg, C.A. (Ajay Garg & Associates).

FOR SEBI : Ms. Reshma Goel, Legal Officer (Presenting Officer)
Mr. Krishnanand Raghavan, Deputy General Manager
Ms. Preeti Maheshwari, Assistant General Manager
Mr. Subhash K. Sinduria, Manager, and
Ms. Kshama Wagherkar, Legal Officer.

ORDER

UNDER SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

1. Atlanta Limited (Atlanta) made an initial public offer (IPO) of equity shares of 43,00,000 shares of which 2,00,000 equity shares were reserved for its employees. The issue opened on September 01, 2006 and closed on September 07, 2006 and the shares were listed on NSEIL and BSE on September 25, 2006. On noticing certain irregularities in the trading in the shares that were issued through the IPO, Securities and Exchange Board of India (SEBI), pending investigations, vide an *ad-interim* ex-parte order dated February 22, 2007, directed certain persons, including Mr. Shadilal Chopra (noticee), not to buy, sell or deal in securities of Atlanta directly or indirectly, till further directions in this regard.

2. On completion of investigation, SEBI issued a show cause notice dated March 09, 2009 (SCN) under Section 11B of the Securities and Exchange Board of India, 1992 (SEBI Act) read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations). The SCN alleged that the noticee, who is connected to Atlanta, financed 11 employees of Atlanta for subscribing for the shares in the employee quota of IPO. On allotment, he received the shares from these employees through

off-market transactions. The SCN, therefore, alleged that the noticee fraudulently cornered the employee quota shares of Atlanta by using the employees as conduit. It also alleged that these acts of noticee were in violation of Regulation 3(c) and 4(1) of PFUTP Regulations. Accordingly, it called upon the noticee to show cause as to why suitable directions under Section 11B of the SEBI Act read with Regulation 11 of PFUTP Regulations, including directions to disgorge the amount/ profit made by him from the sale of the said shares, be not issued against him.

3. The noticee, vide letter dated April 27, 2009, replied to the SCN and sought a personal hearing. Accordingly, the noticee, along with his advocate, authorized person and chartered accountant, appeared before me for the personal hearing on June 23, 2009 and reiterated the submissions made vide his letter dated April 27, 2009.

4. I have carefully considered the SCN and the reply of the noticee dated April 27, 2009. It has been alleged in the SCN that the noticee is a director of Shrikant Studios Pvt. Ltd. (SSPL) which is one of the promoters of Atlanta. He provided a sum of Rs.1,00,50,000 on September 01, 2006, the day issue opened, to 11 employees of Atlanta through cheques with consecutive numbers to enable them to subscribe for shares in the employee quota of the IPO. He received 57,172 shares at issue price of Rs.150 from the said employees through off-market transactions, when the shares were traded on Exchanges at much higher price. He received back the balance money of Rs.14,74,200, i.e., [Rs.1,00,50,000 – (57,172 shares * Rs.150 per share)] from 11 employees on October 11, 2006, as presented in Table A. He sold these shares on BSE through Lalkar Securities Pvt. Ltd. for a total sum of Rs.1,51,96,009 and thereby made a gain of Rs.66,20,209, i.e., [Rs.1,51,96,009 - (57,172 shares * Rs.150 per share)].

Table A: Summary of Transactions by the Noticee

Name of employee	Finance to Employees		Share Received from Employees			Refund from Employees	
	Date	Amount (Rs.)	Date	No. of Shares	Value (Rs.)	Date	Amount (Rs.)
1	2	3 = 6+8	4	5	6	7	8
B.S. Korigeri	1/9/2006	10,50,000	26/9/2006	5,929	8,89,350	11/10/2006	1,60,650
R.K.Khatri	1/9/2006	9,00,000	29/9/2006	5,147	7,72,050	11/10/2006	1,27,950
Sachin Jain	1/9/2006	9,00,000	29/9/2006	5,136	7,70,400	11/10/2006	1,29,600
Uttam Krishna Sawant	1/9/2006	9,00,000	26/9/2006	5,195	7,79,250	11/10/2006	1,20,750
Minal L. Kaku	1/9/2006	9,00,000	26/9/2006	5,225	7,83,750	11/10/2006	1,16,250
S.C. Desai	1/9/2006	9,00,000	27/9/2006	5,008	7,51,200	11/10/2006	1,48,800
Bharati Shetty	1/9/2006	9,00,000	26/9/2006	5,189	7,78,350	11/10/2006	1,21,650
Brinda Vishal Shah	1/9/2006	9,00,000	26/9/2006	5,229	7,84,350	11/10/2006	1,15,650
Ida W. Pinto	1/9/2006	9,00,000	26/9/2006	5,160	7,74,000	11/10/2006	1,26,000
Lilly Omen Jecob	1/9/2006	9,00,000	26/9/2006	5,160	7,74,000	11/10/2006	1,26,000
Ulhash Bhole	1/9/2006	9,00,000	4/10/2006	4,794	7,19,100	11/10/2006	1,80,900
Total		**1,00,50,000**		**57,172**	**85,75,800**		**14,74,200**

5. The noticee has emphatically submitted that the employees, who were entitled to the shares, did not have money while he was having surplus funds. Hence he entered into a joint venture with the employees with the following terms:

- "*The application in employee reservation portion shall be made in the employees name as statutorily required.*
- *Employees will transfer shares to my demat account on allotment.*
- *After listing of Atlanta shares, I shall sell the shares within three months at my discretion.*
- *Employee will be entitled to 25% of the profit after deduction of interest cost @ 9% per annum for the actual number of days of investment. However, in case of loss, I shall not be entitled to any interest."*

He has asserted that he did a normal financing transaction. In normal circumstances, even a company coming out with an IPO provides finance to its employees to apply for its shares. The banks and financial institutions also lend money for making applications in IPOs, including under the employee reservation portion. Hence the gains made by him are legitimate.

6. The noticee has also made the following technical submissions:

a. He is a retail individual investor. He is not registered as an intermediary with SEBI. Hence directions under Section 11B of the SEBI Act, 1992 can't be issued against him.

b. Multiple proceedings - adjudication and Section 11B - have been simultaneously initiated by SEBI for the same cause of action.

c. He had submitted an application dated February 19, 2008 for consent and subsequently revised the consent terms. Without granting him an opportunity of personal hearing before the High Powered Advisory Committee (HPAC), his consent request was not acceded to.

d. He has not been provided a copy of investigation report and statements of various persons recorded in the course of investigation.

e. It is not open for SEBI to unsettle the transactions which were carried out on the exchange and were settled.

f. Neither any investor nor any employee of Atlanta has made any grievance / complaint in the matter and hence there is no cause of action to proceed against him.

g. He needed an opportunity to cross examine Mr. B.S. Korigeri who has stated that there was no written agreement / document to avail the loan.

h. He is a director and a shareholder in one of the group companies, namely, SSPL. He is not a promoter or a 'person acting in concert' in his individual capacity.

i. There are some mitigating factors.

7. I find that the SCN has delineated the transactions neatly, as presented in Para 5 above, along with evidence (bank accounts, demat accounts, cheque numbers, dates, etc.) of movement of funds and shares between the accounts of the noticee and of the 11 employees. The noticee has absolutely no disagreement on these transactions. I, thus, conclude that the noticee provided funds to the 11 employees for applying for shares under the employee quota, received the shares allotted to each of these employees at issue price through off-market transactions, received the refund of balance money from each of these employees, sold the shares received from employees through market and made a gain of Rs.66,20,209.

8. The noticee has, however, argued that he did a normal lending/borrowing transaction as any other financier does and did not corner the shares meant for employees. Let me deal with this substantive issue first, as elaborated at Para 5 above, before I deal with the technical issues raised by the noticee, as in Para 6 above.

a. A typical money lender lends money against security and proper documentation. He provides a part of the money required while the borrowers bring in the balance. He receives back money with interest; he does not share profits. More importantly, he does not forego interest or suffer loss, if the business for which money has been provided, incurs loss. In the instant case, the noticee provided money without any security and documentation. He provided the entire money without requiring the borrowers bring in any margin. If the noticee is to be believed, he provided money with an understanding to share profits from the venture. He even agreed to forego interest and to suffer loss from the venture. He received back the money mostly in kind (shares), i.e., the entire output arising from the venture and appropriated the gains fully. These are not the features of normal money lending.

b. The noticee has stated that he entered into a 'joint venture' with a clear understanding that the shares received by employees would be transferred to him at issue price. Admittedly, it was a venture, not normal IPO finance, as other money lenders do. The money lender and the subscriber do not form a venture to apply for shares in a public issue where the subscriber merely acts as a pass through. I, however, find that it was not a joint venture, as claimed by the noticee. If the noticee is to be believed, he appropriated 75% of profits, after meeting the interest @ 9%. This means that the noticee practically got 77.5% of the profits from the venture. More importantly, there was an understanding that the noticee would suffer the loss and forego interest. If a party appropriates 77.5% profits and suffers the entire loss of a venture, it is venture of that party only and not a joint venture. At best, it can be said that the party bought the rights of employees to apply for shares for 22.5% of profits, if any, to them. Thus, I agree with the noticee that it was a venture, not lending of money, and it was his venture, not a joint venture.

c. I find that the noticee had full control over the employees. Without any security, he provided such huge funds. The employees transferred the shares received on allotment to the noticee at issue price when they had option to sell them at a substantial higher price in market. They also refunded the balance money fully to the noticee. They did all these without any consideration. Though the noticee has argued that he had agreed to give 22.5% profits to the employees, he has not brought up any evidence indicating that he actually gave the profits to them.

d. The noticee failed to produce any document evidencing loan transaction. On the contrary, his submission regarding terms of finance to employees clearly indicates that it was not loan finance. The SCN reiterates this by stating that Mr. B.S. Korigeri, one of the employees, vide his statement made to SEBI on November 02, 2007, has denied of having any agreement to avail loan.

To conclude, it was not lending of money by the noticee to 11 employees. He provided money to 11 employees to apply for shares in the employee quota and received the shares allotted to these employees. This is obvious from his submission about the understanding he had with the employees. Thus, he cornered the shares meant for employees using 11 employees as conduit.

9. The subscription details of IPO of Atlanta reveal that the retail, non-institutional investors and employee segments were subscribed by 12, 17 and 1.14 times respectively. Had the noticee not intervened through the 11 employees, the employee segment would have been undersubscribed and the employees, who had applied, would have got full allotment. Any surplus in the employee segment would have been added to retail segment and retail individual investors would have got higher proportionate allotment. However, the noticee manipulated the demand in the employee segment and thereby deprived other employees from getting full allotment and retail individual investors from getting higher proportionate allotment.

10. Now let me deal with the technical submissions of the notice, as stated in Para 7 above, in seriatim:

a. I note that the noticee provided funds to 11 employees to apply for shares in the employee category and received the shares allotted to them and thereby cornered shares meant for employees / other investors. Therefore, he is a person associated with the securities market and subject to enforcement actions under the securities laws. In this regard, I refer to the judgment of the Hon'ble High Court of Gujarat in the matter of **Karnavati Fincap vs. SEBI (1996) 10 SCL 5 (GUJ)** which has held -

> *"….. In ordinary meaning, the persons associated with the securities market would include* **all and sundry** *who have something to do with the securities market. …… The words "persons associated with the securities market" are of much wider import than intermediaries. ……It is inconceivable to think that a buyer or seller of a scrip is not a person associated with securities market, where or through which he transacts his business, whether as trader or as investor, of selling or buying the required scrip."*

The words *"***all and sundry"** above would include the noticee who has used 11 employees to corner the shares meant for employees / other investors. Further, the fact that the noticee has received shares in his demat account from 11 employees in consequence of his venture cannot be ignored. After co-relating the facts of the case with the above judgment, it is very clear that the noticee is a person associated with the securities market, as stated under Section 11B of the SEBI Act. Further, it is preposterous for the noticee to argue that he should not suffer the liability for the unlawful activities just because he is not a person associated with the securities market.

b. I note that SEBI Act empowers SEBI to initiate a proceeding or a combination of proceedings like 11B, enquiry, adjudication, prosecution etc., as may be warranted, to deal with the violations of the provisions of SEBI Act, Rules and Regulations made there under. These proceedings have different objectives. For example, adjudication penalizes the accused by way of monetary penalty, while 11B proceeding enables directions in the interest of the investors and orderly development of securities market. I, therefore, do not find any infirmity in SEBI initiating 11B and adjudication proceedings against the noticee.

c. I note that the noticee, vide his letter dated February 19, 2008, applied for settlement of the proceedings through a consent order in terms of SEBI Circular dated April 20, 2007. He revised the consent terms thrice. SEBI, however, did not agree to settle the proceedings by consent as the terms offered by the noticee were not adequate. I further note that the consent mechanism provides an avenue to settle a proceeding provided both the parties to the proceeding find the terms of settlement appropriate. In order to facilitate the process, the mechanism provides for a HPAC, which may decline a consent proposal if it is not commensurate with the violation or the specified factors. There is no obligation on the HPAC to hear the party personally before declining a proposal. In any case, this has no bearing on the matter which is being decided on merit. Ideally this should have been brought up in this proceeding.

d. I find no document, which has not been provided, is relied upon in this proceeding. In any case, there is no dispute about the facts.

e. Through this proceeding, SEBI is not trying to unsettle the transactions which were carried out on the exchange and were settled.

f. It is not necessary for SEBI to initiate an action only if there is a complaint. SEBI is obliged to act when it notices any kind of irregularity.

g. The submission of the noticee has made it clear that he had a venture where he was enjoying 77.5% profits and suffering the entire loss. He did not make a loan transaction. Therefore, it is futile to cross examine Mr. B.S. Korigeri who had merely stated that there was no agreement evidencing loan transaction.

h. The noticee may not be a promoter or a 'person acting in concert' in his individual capacity. However, the allegation is that he was a director of SSPL which is a promoter of Atlanta and therefore connected to Atlanta.

i. I do not find mitigating factors relevant in this case which is not a penal proceeding.

11. In the facts and circumstances of the case, I find that the noticee manipulated the demand for shares in the employee category and thereby distorted the market integrity. He cornered the shares meant for employees and other investors as per the prior understanding with them. I, therefore, conclude that the noticee employed fraudulent and unfair trade practices to corner the shares meant for the employees / other investors in the IPO of Atlanta, and made unlawful gains by selling the shares so cornered and thereby violated Regulations 3(c) and 4(1) of PFUTP Regulations. Such acts of serious irregularities threaten the market integrity and orderly development of the market and call for regulatory intervention to protect the interest of investors. The interest of the market and of the investors requires that such entities are not allowed to participate in the market and unjustly enrich themselves at the cost of investors.

12. Accordingly, in exercise of the powers conferred upon me under Section 19, read with Section 11B of the SEBI Act, 1992, and after taking into account the period of prohibition already undergone by the noticee pursuant to the interim order, I hereby issue the following directions:

a. The noticee [Mr. Shadilal Chopra (PAN: AAAPC6067F)] shall not buy, sell or deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period 45 days from the date of this order.

b. The noticee shall disgorge the unlawful gain of Rs.66,20,209. He shall also pay Rs.23,83,275, being the simple interest at the rate of 12% per annum for 3 years (2006-09) on the unlawful gain of Rs.66,20,209. Thus, he shall pay a total amount of Rs.90,03,484 (Rupees ninety lakh three thousand four hundred and eighty four only) within 45 (forty five) days from the date of this order by way of crossed demand

draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai.

e. In case the aforesaid amount of Rs.90,03,484 is not paid within the specified time, the noticee shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a further period of five years, without prejudice to SEBI's right to enforce disgorgement.

13. 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 12 above.

14. This order shall come into force with immediate effect.

Place: Mumbai
Date: August 10, 2009

M. S. SAHOO
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA