WTM/MSS/ISD/08/2009

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

IN THE MATTER OF IPO IRREGULARITIES - DEALINGS BY MR. DUSHYANT NATWARLAL DALAL AND MRS. PULOMA DUSHYANT DALAL IN THE INITIAL PUBLIC OFFERS OF:

IL&FS LTD. (ILFS)
IDFC LTD. (IDFC)
SASKEN COMMUNICATION TECHNOLOGIES LTD. (Sasken)
FCS SOFTWARE SOLUTIONS LTD. (FCS)
GATEWAY DISTRIPARKS LTD. (Gateway)
PROVOGUE (INDIA) LTD. (Provogue)
MSP STEEL LTD. (MSP)
SHOPPERS STOP LTD. (Shoppers)
NECTAR LIFE SCIENCES LTD. (Nectar), and
SUZLON ENERGY LTD. (Suzlon).

Date of Hearing: May 8, 2009

Appearances:

For Noticees: Mr. Dushyant Natwarlal Dalal, and
Mrs. Puloma Dushyant Dalal.

For SEBI: Mr. Jai Sebastian, Legal Officer, (Presenting Officer)
Mr. S. Ramann, Officer on Special Duty
Mr. Praveen Trivedi, Joint Legal Advisor
Mr. Sumit Agrawal, Legal Officer, and
Mrs. Kshama P. Wagherkar, Legal Officer.

ORDER UNDER SECTIONS 11, 11 (4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

1. On noticing certain irregularities in the transactions in the shares that were issued through initial public offers (IPOs) made during the period 2003-2005, before their listing on the stock exchanges, the Securities and Exchange Board of India (SEBI), pending investigations, vide an ad interim ex-parte order dated April 27, 2006, which itself was a show cause notice, directed certain persons, including Mr. Dushyant Natwarlal Dalal (Dushyant), Mrs. Puloma Dushyant Dalal (Puloma) [wife of Dushyant] (hereinafter collectively referred to as "noticees"), Mr. Natwarlal Thakordas (Natwarlal) [father of Dushyant], and Mrs. Rasila Natwarlal (Rasila) [mother of Dushyant], not to buy, sell or deal in the securities market, including in IPOs, directly or indirectly, till further directions. After providing an opportunity of inspection of relevant documents relied upon by SEBI,

considering the written submissions to the show cause notice, and hearing the noticees on November 19, 2007, it confirmed the interim directions against the noticees vide order dated September 09, 2008. It did not pass any direction against Natwarlal and Rasila as they had passed away in the mean time. It, however, froze their demat accounts, which were jointly held with Dushyant, till the passing of the final order.

2. The noticees challenged the confirmatory order of SEBI before the Hon'ble Securities Appellate Tribunal (SAT). While hearing the parties to the appeal (Appeal no. 135 of 2008) on November 14, 2008, the Hon'ble SAT noted that the investigation qua the appellant had concluded on November 11, 2008. It orally directed SEBI to issue show cause notice based on concluded investigation and dispose of the matter expeditiously.

3. Accordingly, SEBI issued a show cause notice dated November 28, 2008 (SCN) under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (SEBI Act). The SCN alleged that Dushyant provided finance to the key operators (KOs), namely, Mr. Purshottam Budhwani (Budhwani) and M/s. Sugandh Estates and Investment Pvt. Ltd. (SEIPL) to enable them to apply for shares in the retail category of 10 IPOs. On allotment, the applicants transferred the shares to the KOs, who, in turn, transferred the same to the demat accounts of Dushyant, Puloma, Natwarlal and Rasila. They also transferred the refund amounts in respect of those IPOs to the noticees. The SCN, therefore, alleged that the noticees, in collusion with the KOs, employed fraudulent, deceptive and manipulative practices to corner the shares meant for retail individual investors (RIIs) in 10 IPOs. They made unlawful gains of Rs.4,94,19,379 on sale of such shares. It also alleged that these acts were in violation of Section 12A (a), (b), (c) of the SEBI Act and Regulations 3 and 4(1) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (PFUTP Regulations). Accordingly, it called upon the noticees to show cause as to why suitable directions under Section 11(4) read with Section 11 and Section 11B of the SEBI Act, including directions restraining them from buying, selling or dealing in securities in any manner for a suitable period of time and directions to disgorge Rs.4,94,19,379, be not issued against them.

4. The noticees, vide letter dated December 17, 2008, sought inspection of documents. SEBI provided an opportunity of inspection of documents on January 14, 2009. During the inspection, the noticees asked for additional documents. SEBI provided

those additional documents vide letter dated January 16, 2009. The noticees asked for further additional documents vide letter dated January 22, 2009. SEBI provided those additional documents also vide letter dated February 16, 2009. The noticees sought cross-examination of Ms. Nimisha Mayur Kadakia (Nimisha) and Budhwani, who had submitted to SEBI that the profits on sale of IDFC shares were shared between them and the noticees. SEBI, vide letter dated February 19, 2009, informed the noticees that their request for cross examination would be dealt with by the competent authority at a subsequent stage of proceedings and advised them to file their reply to SCN. However, no reply to SCN was received. Vide letter dated February 27, 2009, an opportunity of personal hearing was granted to the noticees on March 19, 2009 with an advice to submit reply, if any, to the SCN at the time of hearing. However, on the said date, the noticees failed to appear for the hearing. Nor was any reply to the SCN received. Vide letter dated March 20, 2009, another opportunity of hearing was granted to the noticees on April 02, 2009 with a reminder that they had not replied to the SCN despite lapse of four months. A letter dated March 17, 2009 was received from the noticees on March 20, 2009 seeking an adjournment of hearing till 2nd or 3rd week of April, 2009 on account of indisposition of their Advocate. Vide email dated March 30, 2009, the noticees requested to keep the proceedings in abeyance till the disposal of the appeal pending before Honb'le SAT, and also sought further additional information / documents to enable them to respond to the SCN. Vide letter dated April 11, 2009, the noticees once again reiterated their request for additional documents. SEBI, vide letter dated April 16, 2009, clarified that all relevant findings of investigation / examination report pertaining to the noticees had been incorporated in the SCN and the noticees had inspected relevant documents and had been provided copies of documents sought by them. It also made clear that no document shall be relied upon by SEBI unless a copy of the same was provided to them. It, however, did not accede to the request to keep the proceedings in abeyance as there was no valid reason and justification to do so. It advised the noticees to cooperate with SEBI in complying with the directions of Hon'ble SAT to conclude the proceedings expeditiously and urged them to file their reply to the SCN. It offered a final opportunity of hearing to the noticees on May 8, 2009 and specifically stated that no further extension of time shall be considered. The noticees appeared in person before me for hearing on the aforesaid date. At the time of hearing they filed their reply dated May 7, 2009 and sought time to file additional submissions, which was granted. They filed additional written submissions, including an affidavit, vide letter dated May 18, 2009.

5. I have carefully considered the SCN, and the written submissions dated May 7, 2009 and May 18, 2009. Table A presents a summary of transactions, as borne out from the SCN, based on which allegations have been made therein. Dushyant provided exact amounts of finance from his bank account 0601000008876 with HDFC Bank to enable the KOs to make a set of applications for shares in different IPOs. The KOs transferred the shares received on allotment from applicants to four demat accounts, which are held jointly by Dushyant, as first/second/third holder, with his family members, namely, Puloma, Natwarlal and Rasila. They also transferred corresponding excess amounts, over and above the allotment money, to Dushyant. For example, Dushyant transferred a sum of Rs.5,46,87,500 by cheque to SEIPL towards application money for 1250 applications for Rs.43,750 each in the retail category of ILFS IPO. He received 19,650 shares of ILFS, valued at Rs.24,56,250 at issue price of Rs.125, from SEIPL on July 26, 2005, the day before its listing on July 27, 2005. He received a refund of Rs.46,31,250 through RTGS transfers. The balance amount of Rs.4,76,00,000 (Rs.5,46,87,500-Rs.24,56,250-Rs.46,31,250) was retained by SEIPL for use in IDFC IPO. Thus, Dushyant received back the entire money he had provided for ILFS IPO in the form of shares and cash. The noticees undertook similar transactions in respect of other IPOs and received shares around the listing date. The product of columns 6 and 9, which indicates utilization of funds for each IPO equals the sum of columns 11 to 14, which indicates return of money, which equals the money provided by Dushyant to KOs in Column 3 of table A, except in case of IDFC and Gateway, where the amount actually used for IPO applications are Rs.15,51,76,000 and Rs.4,09,60,080 respectively.

6. Table B presents the unlawful gains made on sale of such shares. Since Dushyant, Puloma, Natwarlal and Rasila are members of the same family, and Dushyant, jointly with other three family members, holds the demat accounts, which were used to receive and sell shares, the SCN has considered their dealings in these shares together for the purpose of calculating unlawful gains. In case of IDFC IPO, Budhwani transferred 1,44,000 IDFC shares to the noticees, who sold these and made a profit of Rs.49,03,200. At the instance of Dushyant, Budhwani sold 6,59,600 shares in the market and transferred 56,000 shares to Nimisha for sale, and the gains from sale of these shares were shared with Dushyant. Hence the calculation of unlawful gains takes into account the gains from transfer of these IDFC shares to the extent shared with Dushyant. In other IPOs, the calculation is simple, as transactions have happened directly between the noticees and the KOs. In the process, the noticees made a total unlawful gain of Rs.4,94,19,379.

Table A: Transaction Details by the Noticees

KO	IPO	Amount (Rs.) provided by Dushyant	Issue Details					No. of Applica-ions made	Receipt of Shares and Refunds by Dushyant/Puloma./ Natwarlal/Rasila				Balance with Kos (Rs.)
			Issue Price (Rs.)	Retail Application Size		Retail Allotment Size			Receipt of Shares		Refund (Rs.)	Roll over (Rs.) for IDFC	
				No. of Shares	Amount (Rs.)	No. of Shares	Amount (Rs.)		No. of Shares	Value of Shares (Rs.)			
1	2	3=(6*9)=(11+12+13+14)	4	5	6 = (4*5)	7	8 =(4*7)	9	10	11=(4*10)	12	13	14
SEIPL	ILFS	5,46,87,500	125	350	43,750	50	6,250	1,250	19,650	24,56,250	46,31,250	4,76,00,000	0
	IDFC	4,76,00,000	34	1,400	47,600	266	9,044	1,000	1,98,968	67,64,912	4,08,35,088	0	0
	Sasken	13,65,00,000	260	175	45,500	25	6,500	3,000	7,200	18,72,000	13,46,28,000	0	0
	FCS	6,97,50,000	50	900	45,000	100	5,000	1,550	24,600	12,30,000	6,85,20,000	0	0
Budhwani	Gateway	4,09,74,350	72	630	45,360	90	6,480	903	38,340	27,60,480	3,70,00,000	0	12,13,870
	Provogue	12,90,72,000	150	320	48,000	40	6,000	2,689	8,000	14,16,000*	12,57,28,000	19,28,000	0
	MSP	6,57,00,000	10	4,500	45,000	500	5,000	1,460	20,200	2,02,000	5,24,09,250	1,30,88,750	0
	Nectar	7,20,00,000	240	200	48,000	25	6,000	1,500	13,500	32,40,000	2,10,36,110	4,77,23,890	0
	IDFC	8,47,00,000 + Roll overs = 15,67,18,750	34	1,400	47,600	266	9,044	3,260	8,67,160#	2,94,83,440	12,56,92,560	0	15,42,750
	Suzlon	8,64,14,400	510	96	48,960	16	8,160	1,765	15,532	79,21,320	7,90,00,000	0	-5,06,920@

* valued at Rs.177 per share; # includes 7,23,160 disposed of through Budhwani; @ returned to Budhwani on February 13, 2006

Table B: Computation of unlawful gains by the Noticees

IPO	Date of Listing	Issue Price (Rs.)	Receipt of Shares from KOs			Sale of Shares			Unlawful Gain (Rs.)
			Date of Receipt	No. of Shares	Valuation Price (Rs.)	Date of Sale	No. of Shares Sold	Sale Price (Rs.)	10=8*(9-6)
1	2	3	4	5	6	7	8	9	10
Gateway	31.03.05	72	31.03.05	38,340	72	11.04.05	675	125.87	36,362
						12.04.05	2,000	127.72	1,11,440
						26.04.05	30,000	142.85	21,25,500
							5,665*	112.05	2,26,883
Provogue	07.07.05	150	07.07.05	7,160	150	07.07.05	8,000	247.95	7,83,600
			08.07.05	840					
MSP	18.07.05	10	18.07.05	20,200	10	18.07.05	20,200	15.61	1,13,322
Nectar	18.07.05	240	18.07.05	13,500	240	18.07.05	11,100	266.73	2,96,703
							2,400*	275	84,000
ILFS	27.07.05	125	25.07.05	19,650	125	11.08.05	1,223	206.9	1,00,164
						02.09.05	10,000	208.16	8,31,600
						16.09.05	613	221.63	59,234
						16.09.05	300	221.63	28,989
IDFC#	12.08.05	34	08.08.05	1,96,574	34	12.08.05	1,98,968	70.24	72,10,600
			12.08.05	2,394		12.08.05	1,44,000	68.05	49,03,200
			13.08.05	1,44,000			5,00,000	61.00@	55,00,000
							1,59,600	65.14@	24,65,158
							7,560*	69.5	2,68,380
							56,000	67.85@	18,96,000
							2,39,400	37 @	88,57,800
Sasken	09.09.05	260	03.09.05	7,150	260		7,200	464.55	14,72,760
			09.09.05	50					
FCS	21.09.05	50	20.09.05	24600	50		24600	332	69,37,200
Suzlon	19.10.05	510	18.10.05	14120		19.10.05	5000	673.6	8,18,000
				1412		24.10.05	1400	645.46	1,89,644
						19.10.05	4000**	692.85	7,31,400
							3600**	692.85	6,58,260
							1412**	525	21,180
Shoppers		238	***	***	238	23.05.05	15000	372.60	20,19,000
						24.05.05	5000	372.60	6,73,000
Total								**Total**	**4,94,19,379**

**shares not yet sold and lying in demat accounts, valued at the closing price on the listing day;*
*** Off market sale;*
**** Magnum Equity, broker of Dushyant, received shares from Budhwani and thereafter sold these shares in account of Dushyant;*
@ Profits on sale of shares by Budhwani and Nimisha.

7. A summary of submissions made by the noticees is as under:

i. They had extended loans to SEIPL and Bhudwani, who had always honoured their commitment to repay the loans, on commercially recognized and accepted terms, on principal to principal basis. The deployment of loan was at the discretion of borrowers and they did not have any control over or knowledge of the end use. They paid for the shares transferred by KOs to them at IPO price (P-16 of their reply dated May 7, 2009).

ii. It has been alleged that Budhwani sold 6,59,000 IDFC shares on the instruction of Dushyant. The document relied on for this allegation, that is, the letter dated May 16, 2006, no where states this. It has also been alleged that Budhwani transferred Rs.1.95 crore and Rs.55 lakh from the sale proceeds of

the above shares. Budhwani paid the said amounts due on account of loans and not by way of sharing profits from sale of shares. These amounts can be added to the gains of the noticees only if Budhwani affirms on oath and supports by documentary evidence that he shared the gains with the noticees. They need to be provided an opportunity to cross examine Budhwani.

iii. It has been alleged that Budhwani transferred 56,000 IDFC shares to Nimisha who, in turn, sold the shares for Rs.38 lakh and transferred the entire amount to the noticees. The noticees received the amount towards running account of Nimisha and not towards profit on sale of shares. The profits from sale of shares can be added to the gains of the noticees only if Nimisha affirms on oath and supports by documentary evidence that she shared the gains with the noticees. They need to be provided an opportunity to cross examine Nimisha.

iv. It has been alleged that at the instructions of Dushyant, Budhwani transferred 2,39,400 IDFC shares @ Rs.37 to Chhadva family and passed on the entire sales consideration of Rs.88,57,800 to Dushyant. The sale proceeds include the cost of these shares @ Rs.34 amounting to Rs.81,39,600 and the entire amount of Rs.88,57,800 can't, therefore, be treated as their gain.

v. In the interim order, the computation of unlawful gains was made based on closing price on listing day. However, in the SCN, actual prices have been used. By this, SEBI is transgressing the authority of law.

vi. SEBI has declined to accede to their request to provide the information relating rules, regulations etc. of opening and operation of bank accounts, opening and operation of demat accounts, IPO applications, etc. The request for an adjournment of hearing fixed on May 8, 2009 was also not conceded. These amount to violation of principles of natural justice.

vii. SEBI has erred in law by initiating adjudication and two Section 11B proceeding simultaneously.

viii. SEBI has no powers to initiate disgorgement proceedings.

ix. They are neither intermediaries registered with SEBI nor persons associated with the securities market and, therefore, SEBI has no jurisdiction over them.

x. The cause of action arose on October 19, 2005 when the Suzlon got listed. However the SCN was issued on November 11, 2008 beyond the limitation period of 3 years. Therefore, the SCN is not sustainable.

xi. CBI did not find any fraudulent activity on the part of the noticees. SEBI should conclude its proceedings based on the CBI findings.

xii. A broad macro level view needs to be taken. The depositories, banks, merchant bankers, registrars to issue, etc. failed simultaneously and they have been let off lightly. The gains made by the noticees were not by design, but by default on the part of various agencies. In this frame of reference, holding the noticees responsible for alleged irregularities is unsustainable. The direction proposed in the SCN is disproportionate to the gravity of the matter and does not take into account mitigating factors.

8. I find that the noticees have not contested the basic facts about the transactions, as alleged in the SCN. While admitting the facts, they pointed out certain inaccuracies in the SCN regarding dates of disbursement of loan in IPOs and carry forward of refunds held with KOs from one IPO to another. I am not examining these as these do not disturb the essence of the facts and the resultant charge. They have, however, raised serious objections on inclusion of certain amounts in the gains made by them and the authority of SEBI to initiate the proceedings against them. I will, of course, be examining these. Subject to this, I conclude that the noticees undertook the transactions as stated in table A, made profits (or unlawful gains) as stated in table B, and such transactions deprived RIIs of their legitimate share in allotment of 10 IPOs.

9. The issues that require determination, therefore, are:

a. Are the noticees mere money lenders?

b. Are the profits (unlawful gains) of the noticees computed correctly?

c. Is any principle of natural justice been violated?

d. Does SEBI have authority to proceed with this proceeding?

10. Are the noticees mere money lenders?

a) A money lender lends money against security and proper documentation and receives back money with interest. In the instant case, the noticees provided an aggregate of about Rs.85 crore for these IPOs without any security and documentation. They received back the money in kind (shares). The striking features of these transactions are: the money was provided to KOs around the closure of the IPO, the money provided exactly matched the amount payable on a set of applications under the retail category, most of the shares received on allotment were transferred in lots matching allotments to RIIs, the shares were transferred in off-market around the date of listing, the shares were

transferred at the IPO price when the KOs had option to sell them at a substantial higher price in market, excess money over and above the allotment amount were transferred back to the noticees, etc. The timing and manner of movement of shares and funds from and to KOs, by no stretch of imagination, can be associated with normal lending of money.

b) The precise timing of movement of the precise amounts of funds and of the precise number of shares between the KOs and the noticees occurring repeatedly across IPOs and KOs over time, clearly suggests that noticees had control over the KOs and also the end use of funds and were aware of the modus operandi of the KOs. The ledger produced by noticees explicitly recognizes the end use of the funds provided to the KOs. It has entries that acknowledge the name of the IPO in the header of the page itself. The noticees received IPOs shares at the issue price even after the date of listing. For example, Dushyant received 38,340 Gateway shares at the issue price of Rs.72 on the listing day i.e. March 31 2005, when the price opened and closed at Rs.90 and Rs.112.05 respectively. Such a pattern of dealings with the KOs can't be undertaken unless there is a prior understanding with them.

c) There is a pattern in the receipt of shares by the noticees from the KOs. For example, Dushyant received 1,98,968 shares of IDFC from SEIPL. This corresponds to the allotment to 748 applications in the RII category. Had the noticees applied in individual capacity, they could have got an allotment of 266 IDFC shares each. However, they could get 1,98,968 IDFC shares by financing 748 applications under the RII category. The DIP Guidelines envisage an investor to apply for shares for a value up to Rs.1 lakh. These do not envisage an investor funding 748 applications each up to Rs.1 lakh, which defeats the solemn objectives of such provisions. If a person does so, it deprives genuine RIIs from getting their fair share in allotment. The noticees did so by making available the finance to KOs for making multiple applications for an aggregate value in excess of Rs.1 lakh with the full knowledge of prohibition of the same. Had they not done this, these 1,98,968 IDFC shares would have been available for allotment to RIIs. Thus, the noticees clearly cornered the shares meant for RIIs and in the process, deprived them of their rightful share in allotment in these IPOs.

11. Are the profits (unlawful gains) of the noticees computed correctly?

a) In nine of the ten IPOs in which unlawful gains have been allegedly made by noticees, there is no dispute on the facts of amounts paid and shares received. Therefore, the profits earned in those IPOs would be deemed suspect given my findings above.

b) The noticees have vehemently contested transfers of Rs.1.95 crore and Rs.55 lakh from Budhwani towards sale proceeds of 6,59,000 IDFC shares and inclusion of corresponding profits of Rs.55,00,000 and Rs.24,65,158 in the profits made by them. Similarly, they have contested transfer of Rs.38 lakh from Nimisha towards sale proceeds of 56,000 IDFC shares and inclusion of corresponding profits of Rs.18,96,000 in the gains made by them. A summary of these transactions is presented below:

Sold by	**No. of Shares sold**	**Sale Proceeds (Rs.)**	**Profits (Rs.)**	**Share of Noticees in Profits (Rs.)**
Budhwani	5,00,000	3,04,13,450	1,35,00,000	55,00,000
Budhwani	1,59,000	1,02,82,254	49,69,944	24,65,198
Nimisha	56,000	38,00,000	18,96,000	18,96,000

I find that the noticees provided Rs.15,67,18,750 to Budhwani. Out of this, Bidhwani used Rs.15,51,76,000 for making 3,260 applications for 1,400 IDFC shares each. Budhwani received 8,67,160 (3,260*266) shares and refund of Rs.12,56,92,560 after allotment. He passed on the entire refund amount to the noticees. Of the shares received, he transferred 1,44,000 shares to the noticees and 56, 000 shares to Nimisha and sold 6,59,000 shares in the market at the instance of the noticees. The details of these transactions are as under:

Funds provided by Dushyant + Roll over Less: Balance with Budhwani Balance	Rs.15,67,18,750 Rs.15,42,750 Rs.15,51,76,000
No. of IPO applications made from this money	3,260
Amount deposited with applications (3,260 * Rs.47,600)	Rs.15,51,76,000
No. of shares received by Budhwani on allotment (3,260 *266 shares)	8,67,160
Allotted value of shares (8,67,160 shares * Rs 34 issue price)	Rs.2,94,83,440
Refund received by Budhwani (Rs.15,51,76,000–Rs.2,94,83,440)	Rs.12,56,92,560
Amount returned by Budhwani to Dushyant	Rs.12,56,92,560
Disposal of Shares: Sold by Budhwani Transferred to Noticees Transferred to Nimisha Held by Budhwani **Total**	 6,59,000 1,44,000 56,000 7,560 **8,67,160**

The noticees have not contested the movement of money and shares relating to transactions in IDFC shares. They have only contested the sharing of profit by Bhudwani and Nimisha with them. What is material is financing for allotment of 8,67,160 IDFC shares and the gains arising from disposal of these shares. If the fact of sharing of profit is ignored, the entire gains from sale of such shares would be considered as the gains of the noticees. However, according to the SCN, the gains have been shared between the KOs and the noticees and, therefore, only the part of the profits transferred to the noticees has been included in the gains made by them. I have, therefore, no reason to exclude these amounts from the gains made by the noticees. I, however, notice that notional gains in

respect of some shares which are still held in demat account of the noticees have not been taken into account in the SCN. For example, 7514 ILFS shares are lying in the account of the noticees and the notional gains in respect of these have not included in the gains calculated in Table B.

c) The noticees have sought exclusion of cost amounting to Rs.81,39,600 from sale proceeds of Rs.88,57,800 transferred by Chhadva family to them. The SCN makes it clear that the noticees did not provide finance for these shares and hence the claim of the noticees is justified. Therefore, I am inclined to exclude this amount completely from the gains made by the noticees.

d) In the interim order, closing prices on the listing day was used to arrive at the unlawful gain. The SCN, however, has calculated the unlawful gain based on the actual prices where shares have been disposed of. In case of a very small portion of shares which has not yet been disposed of, the closing price on the last trading day has been used. This approach leads to more accurate gain / loss and is most appropriate for disgorgement purpose.

e) Taking the above into account, the unlawful gain of Rs.4,94,19,379, as estimated in the SCN, is reduced by Rs.88,57,800. Hence the noticees made an unlawful gain of Rs.4,05,61,579.

12. Is any principle of natural justice been violated?

a) I find that the noticees have been provided an opportunity of inspection as well as a large number of documents sought by them, as elaborated in Para 4 above. SEBI, vide letter dated April 16, 2009, clarified that no document shall be relied upon by SEBI unless a copy of the same was provided to them. I find that all the information / documents relied upon by SEBI for the charges in the SCN have been provided to the noticees and that no document, which has not been provided, is relied upon in this proceeding. I note that the noticees made unreasonable demand for a large variety of documents. For example, they asked for a copy of authority vested in Mr. S. Ramann to issue the SCN. They also asked for rules and regulations relating to opening of bank accounts and demat accounts. These are not relevant for the issue in hand. I also find that the noticees sought repeated adjournment of hearings. It was postponed from March 19, 2009 to April 2, 2009 and then to May 8, 2009. The hearing could not have been postponed indefinitely. Therefore, I find that there is no violation of principles of natural justice, as contended by the noticees.

b) I find that SEBI relied upon the statements of Budhwani and Nimisha to arrive at the understanding between them and the KOs. Even without the statements, the understanding is clear from the movement of money and off-market transfers of shares. The statements are only corroborative. A careful examination of numbers indicates sharing of profits in many of the IPOs, though it has taken different forms. In case of IDFC shares, Budhwani transferred Rs.1.95 crore out of total sale proceeds of Rs.3.04 crore obtained from sale of 5,00,000 shares (Table under Para 11(b)). In case of ILFS, SEIPL obtained an allotment of 62,500 shares from the funds provided by the noticees. However, it transferred 19,650 shares to the noticees and retained the balance 42,850. The noticees and SEIPL enjoyed profits from 19,650 and 42,850 shares respectively. Therefore, the statements relied upon in the SCN reduce the disgorgement liability of the noticees. In the absence of this statement, the noticees would have been liable for the entire profits on sale of all the shares purchased with the funds provided by them. Therefore, I find that there is no need for cross examination of Budhwani and Nimisha.

13. Does SEBI have authority to proceed with this proceeding?

a) I note that SEBI Act empowers SEBI to initiate appropriate 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 proceedings enable directions in the interest of the investors and orderly development of securities market. In the instant case, SEBI has initiated two proceedings - 11B and adjudication - against the noticees. It has not initiated another 11B proceeding when one 11B proceeding is pending, as claimed by the noticees.

b) I note that the noticees, in concert with the KOs, cornered IPO shares meant for RIIs by providing finance for IPO applications and thereafter receiving corresponding shares allotted in the IPOs in their demat accounts through off market transfers from KOs. Therefore, they are persons 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 noticees who have funded the KOs to corner the shares meant for RIIs. Further the fact that the noticees have received shares in their demat accounts from KOs in consequence of the money provided to them cannot be ignored. After co-relating the facts of the case with the above judgment, it is very clear that the noticees are persons associated with the securities market as stated under Section 11 (4) (b) of SEBI Act. Further, it is preposterous for the noticees to argue that they should not suffer the liability for the unlawful activities just because they are not persons associated with securities market.

c) I refer to the case of *Bank of Baroda v. Securities and Exchange Board of India* 2000 (038) CLA 226 SAT wherein it was held that the powers under Section 11B to issue directions are wide enough to include any measures in the interest of securities market, including disgorgement. The SAT held as under:

"And it is also well settled that where legal rights have been invaded, and a statute provides for a general remedy as provided for in Section 11 read with 11 B of the SEBI Act, 1992 (" the Act"), the regulator may use any available remedy to make good the wrong done. Such remedial actions could include rescinding a fraudulent sale, ***secure disgorgement*** *or order restitution. Since each of these remedies are remedial and equitable, it is open for the regulator to order these in the interest of the investing public and in the interest of a secure capital market".*

While disposing of the appeal No. 147/2006 in the matter of NSDL Vs. SEBI related to the IPO irregularities, Hon'ble SAT, vide its order dated November 22, 2007, observed:

"We do not think that the Board ***could direct the appellants to disgorge*** *the aforesaid amount without first determining their guilt and whether they had made any illegal gains."*

This makes it clear that SEBI could direct the noticees to disgorge, if they are found guilty.

d) I note that SEBI and CBI are different agencies having different responsibilities and objectives. Their focus and scope of investigations are different. It is possible that these agencies arrive at different findings. If they were to arrive at the same finding, there would not be need for two agencies and separate investigations by them. Therefore, I do not agree with the noticees that the findings of CBI should be taken into account by SEBI for disposal of quasi-judicial proceedings under the SEBI Act, as much as they would not like the findings of SEBI to be taken into account by CBI.

e) I do not agree with the argument of the noticees that the SCN issued in 2008 is not sustainable. This SCN is in continuation of the proceedings that began with the

interim order dated April 27, 2006. Further, I note that the noticees have partly contributed to the delay. In fact, they have major contribution to delay in disposal of this SCN.

14. The noticees have submitted in their affidavit that D. N. Dalal HUF extended the loan. However, I find that the money have moved from the account of Dushyant with HDFC Bank. I also find that the shares have been credited to and debited from the demat accounts which are held by Dushyant himself or by Dushyant jointly with other family members. The sale proceeds have been received in the accounts of Dushyant as well as of other family members. In some cases, the sale proceeds have moved to the account of Dushyant after its receipt in the accounts of the family members. This makes it clear that all the family members acted together in the game plan hatched by Dushyant. Therefore, the profits made from these transactions have been taken together.

15. In the facts and circumstances of the case, I find that the noticees manipulated the demand for shares in the RII category and thereby distorted the market integrity. They received the shares from the KOs as per the prior understanding with them. By doing this, they deprived the RIIs of their legitimate share in the allotment in the IPOs and made an unlawful gain of Rs.4,05,61,579 to the detriment of the RIIs. I, therefore, conclude that the noticees employed fraudulent, deceptive and manipulative practices to corner the shares meant for RIIs in the aforesaid IPOs stated in tables above, and made unlawful gains by selling the shares so cornered. Hence, I hold that the noticees have violated Section 12A (a), (b) and (c) of the SEBI Act and Regulations 3 and 4 (1) of the PFUTP Regulations.

16. I note the mitigating factors brought up by the noticees and the proportionality rule for punishment. I do not find it relevant in this case which is not a penal proceeding. 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. Such acts of serious irregularities threaten the market integrity and orderly development of the market and calls for regulatory intervention to protect the interest of investors. Accordingly, in exercise of the powers conferred upon me under Section 19, read with Sections 11, 11 (4) and 11B of the SEBI Act, 1992, and after taking into account the period of prohibition already undergone by the noticees pursuant to the interim order, I hereby issue the following directions:

a) The noticees [Mr. Dushyant Natwarlal Dalal (PAN AAAPD 5859Q) and Mrs. Puloma Dushyant Dalal (PAN AAEPD 2909B)] 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; and

b) The noticees shall disgorge the unlawful gain of Rs.4.05 crore (rounded off from Rs.4,05,61,579).

c) The noticees shall also pay Rs.1.95 crore (rounded off from Rs.1,94,69,558), being the simple interest at the rate of 12% per annum for 4 years (2005-09) on the unlawful gain Rs.4,05,61,579.

d) The noticees shall pay the above amount of Rs.6 crore (Rupees six crore) 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 Rs.6 crore is not paid within the specified time, the noticees 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 seven years, without prejudice to SEBI's right to enforce disgorgement.

17. This order shall be served on all recognized stock exchanges and depositories to ensure that the noticees are not allowed to undertake transactions as prohibited in Para 16 above.

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

PLACE: MUMBAI
DATE: July 21, 2009

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