

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K.M. ABRAHAM, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11(1),11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST PINNACLE SHARES REGISTRY PRIVATE LIMITED IN THE MATTER OF PARSOLI CORPORATION LIMITED.

Date of hearing: December 16, 2008

Appearance:

For Pinnacle Shares Registry Private Limited: Mr. Vinay Chauhan, Advocate

Mr. Mukesh Trivedi,

Mr. Parkash Makwana,

For Securities and Exchange Board of India: Mr. Suresh B. Menon, Chief General Manager

Mr. Vijayakrishnan. G, Deputy Legal Adviser

Mr. Debashish Bandyopadhyay, Assistant General Manager

1. Pinnacle Shares Registry Private Limited (hereinafter referred to as the noticee) is registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) as a category-I Registrar to an Issue and Share Transfer Agent (Registration no. INR000003787) and functioning as such to various companies including Parsoli Corporation Limited (hereinafter referred to as the company). The shares of the company are listed on Bombay Stock Exchange Limited (hereinafter referred to as BSE). SEBI received complaints against the company from the shareholders (including one Javed Sonalkar) about the rejection of their demat/share transfer requests. The details of the complaint received from Mr. Javed Sonalkar, in brief, are as follows:

The complainant was holding 1000 shares of the company under folio no. J00287. When the shares were submitted for dematerialization by

him, the same were rejected by the noticee Pinnacle/company on various grounds. The details of Dematerialization Requests Forms (DRF) and reasons for its rejection (as mentioned in the complaint) are summarized as under;

DRF No.	Details of Rejection Memo(No.)	Reason for Rejection	Compliance by Share Holder
No. 1003811 dated 19.07.2006	PINNACLE/PAR/2006/113 dated 17.02.2007	Specimen Signature differs	Signature verified Branch Manager of Central Bank
No. 1027563 dated 27.06.2007	PINNACLE/PAR/2007/15 dated 31.12.2007	DRF late receipt from NSDL	Fresh DRF generated
No. 838661 dated 29.01.2008	PINNACLE/PAR/2008/77 dated 25.03.2008	Duplicate shares issued	Never applied for

2. In view of the dubious manner in which the demat requests were rejected and on the basis of the above complaint, SEBI conducted an inspection of the records of both company and the noticee during June 2008-July 2008. The inspection was conducted to inquire *inter alia* as to whether the noticee had;

- i) maintained the books of account and other books in the manner specified by the Securities and Exchange Board of India (Registrar to an Issue and Share Transfer Agent) Regulations, 1993 (hereinafter referred to as the said Regulations) and
- ii) complied with the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) and the Rules and Regulations made there under.
- iii) followed the procedure with respect to the share transfer activities of the company and more particularly on the complaints relating to demat/share transfer rejections, unauthorised share transfers etc.

3. The inspection conducted by SEBI *prima facie* observed various irregularities including the delay in dematerialisation requests of the shareholders, committed by the noticee, while handling the share transfer activity of the company. Some of the observations in brief are as follows:

i) The noticee functioned as Registrar and Transfer Agent of the company without taking possession of the records of signatures/signature cards which are essential for the purpose of all matters relating to transfer of securities and maintenance of records, as required under Regulation 53A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 (hereinafter referred to as the DP Regulations) read with SEBI circular dated December 27, 2002. The reason given by the noticee for the rejection of demat requests of the shareholders was different from given by the company.

ii) The shares held by the genuine investors of the company were fraudulently transferred to accounts of persons who belonged to the promoter group of the company and also to persons linked to the promoter group of the company. Subsequent to the aforesaid fraudulent transfers, the shares were dematerialized by the above mentioned transferees through their respective depository participants who in turn forwarded the same to the company/ noticee.

iii) There was a marked difference between the actual signature of investors as available on the Initial Public Offer signature card/transfer deed for genuine purchase by the shareholder and the signature on the transfer deed used for fraudulent transfer of shares. In respect of the fraudulent transfers that had taken place from certain shareholders' accounts, it was noted that the shareholders hailed from various places outside Ahmedabad whereas the transfer deeds suggesting fraudulent transfers were purchased from Ahmedabad and had almost continuous serial numbers. All the fraudulent transfers took place in off market trades from various shareholders' account. Large number of irregular and fraudulent transfers and subsequent

dematerialization of the shares of the company were observed in the names of promoters, associates and relatives mostly during 2005.

iv) The noticee rejected the demat requests of many investors on number of occasions based on a copy of letter received from the company stating *inter alia*, “Certificate received is already stands dematted in our system. Please contact company for further details.”

We have taken necessary steps to compensate you considering that your request seems to be genuine. We have already credited above referred accounts by off-market transactions. Xerox copy of delivery slips is enclosed and request you to verify with your DP. Hence your problem is resolved”. The noticee had informed the shareholders the reason for rejection of demat as “*the certificate submitted by the investors are those for which the duplicates have already been issued.*” However, no records were produced to suggest that duplicate certificates had been issued to the shareholders after complying with the procedural requirements.

v) The noticee dematerialized shares of the company even though the signature on the Demat Request Form (DRF) was not tallying with that of the transfer deed. The noticee processed transfer of shares of the company into accounts held in the names of the promoter group/entities linked to the promoter group without following due procedure. Besides, the noticee had also delayed the process of demat requests of investors of the company, beyond specified time period.

4. Thus, the noticee *prima facie* violated the provisions of Regulations 53A and 54(5) of the DP Regulations, clauses 1, 2, 3, 6 and 7 of Schedule III of the Code of Conduct specified under the provisions of the said Regulations and the circular of SEBI dated December 27, 2002. Accordingly, SEBI issued a notice dated August 22, 2008 to the noticee asking it to show cause as to why appropriate directions (including suspension of the certificate of registration) shall not be issued against it under Sections 11B, 11(1) and 11(4) of the Act read with the provisions of Securities and

Exchange Board of India (Intermediaries) Regulations, 2008, pending inquiry. A copy of the inspection report, other relevant documents as stated therein were also provided to the noticee along with the aforesaid show cause notice.

5. The noticee, vide letter dated September 4, 2008 requested SEBI to grant further time to file its reply and further sought for an opportunity of hearing before taking any decision in the matter. Subsequently, vide letter dated September 25, 2008, the noticee, *inter alia* stated that it had started acting as the Registrar and Transfer Agent of the company in the year 2001 and, thereafter, it had executed an agreement on April 25, 2003 with the company for carrying out the physical share transfer activity. According to the noticee, the company had retained the specimen signature records with itself and that as and when DRF/transfer deed were received from shareholders, the same was sent to the company for signature verification. The noticee claimed that the DRF/transfer deed requests were processed only after the receipt of specific confirmation from the company regarding signature verification. According to it, all the transfers were duly certified by the officials of the company. In respect of the transfer deeds having continuous serial number purchased from Ahmedabad, the noticee contended that, in the absence of any suspicion with regard to the validity of certificates/transfer deeds, it did not find anything unusual. It added that the transfer deeds are generally received in bulk. The noticee added that the staff personnel who processed the transfer deeds were not aware that the transferees were either belonging to promoter group or the front entities, as alleged. The noticee further claimed that in response to its letter dated June 4, 2005 (to handover the signature records), the company, vide letter dated August 16, 2005 stated that the signature records were in torn condition and therefore, it would be difficult to handover the same to the noticee. With regard to the rejection of DRF of investors, the noticee stated that, it had not rejected the same based on the copy of letter from the company. According to it, the DRF were rejected *inter alia* stating, "Certificate submitted by investors are those for which duplicate have already been issued." It is the case of the noticee that, since the investors were compensated, it had not raised any objection with the company. The noticee also stated that rejection reason cited by it was on the basis of its understanding. According to the

noticee, it had nothing to gain by citing a different reason for rejection as alleged and that it had not gained anything from the alleged fraudulent acts of the promoters of the company save and except the fees towards rendering its services as Registrar and Transfer Agent amounting to Rs 25,000/- per annum. The noticee stated that since the shares were already dematted (as per its system) and the fact that the company had already compensated the investors, it did not examine the procedural requirements necessary for rejecting DRF's based on the duplicate certificate already issued. According to the noticee, since the signature records of the shareholders of the company were not provided to it, the demat requests received from the shareholders were forwarded to the company for its approval. In respect of the demat requests from one Dipika Hasmukh Gandhi, the noticee stated that the DRF was generated by the depository participant on April 30, 2008 and the same was directly sent by the depository participant to the company for its approval. In respect of demat requests from Mr. Jatin J. Parikh and Ms. Panna J. Parikh, the noticee stated that it had followed up with the company and the company sent the objection only on February 4, 2008. Similarly, in respect of demat requests received from Mr. Pravin Shah, Mr. J.K. Patel/Ms. Kalpana Patel etc, the noticee contended that it could not be held responsible for the delay as it had taken up the issue with the company regularly. The noticee claimed that it had not failed to exercise due diligence and care in the discharge of its duties and in the said context, the noticee placed reliance on the following judgments :

- a. Chander Kanta Bansal v/s. Rajinder Singh Anand {(2008) 5 SCC117}
- b. Imperial Corporate Finance & Services Pvt. Ltd. v/s. SEBI (Appeal No.56/2003)

6. The noticee also denied of having violated the provisions of Circular dated December 27, 2002. The noticee added that it had not indulged in any manipulation and that it had no relationship/nexus/connection with the promoters of the company.

7. SEBI granted an opportunity of hearing to the noticee on November 12, 2008. The said hearing was postponed to November 17, 2008 as

requested by the noticee. Meanwhile, the noticee requested SEBI to keep the proceedings in abeyance as it had filed an application for consent order in terms of SEBI circular dated April 20, 2007. The consent application of the noticee was examined by SEBI and the same was rejected considering the seriousness of the matter. Accordingly, another opportunity of hearing was granted to the noticee on December 16, 2008. Mr. Vinay Chauhan, advocate appeared on behalf of the noticee. Mr. Mukesh Trivedi and Mr. Parkash Makwana, employees of the noticee were also present at the time of the hearing. Mr. Vinay Chauhan, the learned counsel while reiterating the submission of the noticee (vide letter dated September 25, 2008), contended that the present case is not a fit case to pass an interim order at this stage. No emergency situation exists which warrant the issuance of an interim order in the present case. The learned counsel also contended that Section 11(4) of the Act, does not empower SEBI to suspend the certificate of registration of an intermediary without conducting an enquiry, in terms of the Regulations framed there under. The learned counsel also claimed that his client was not benefited, apart from the normal fee, from its activities with the company. Thereafter, vide letter dated December 26, 2008, the noticee filed its written submission reiterating the above points made by it during the course of hearing. Further, it also forwarded the copy of certain press clippings in respect of the activities carried out by the company, vide letter dated December 29, 2008.

8. I have considered the show cause notice issued to the noticee, its oral as well as written submissions and other materials available on record. In the facts and circumstances, the issues for consideration are:

- i. Whether the noticee prima facie violated the provisions of the DP Regulations and various clauses of the Code of Conduct specified in Schedule III of the said Regulations as mentioned in the show cause notice dated August 22, 2008 and
- ii. If so, the nature of the direction to be passed against the noticee.

9. I note that the inspection of the noticee by SEBI was an offshoot of complaints received from shareholders against the company in respect of various issues including irregularities in dematerialization requests, share transfer etc. The inspection conducted by SEBI *inter alia* observed that the shares held by genuine investors of the company were *prima facie* fraudulently transferred to accounts of persons belonging to the promoter group of the company and also to various other persons (hereinafter referred to as front entities) apparently connected to the promoter group of the company by forging the signatures of the genuine investors on the transfer deeds. The inspection conducted by SEBI observed approximately 450 such instances. For example, it was *inter alia* observed that shares of the company belonged to one Dipika Hasmukh Gandhi (received pursuant to the IPO allotment of shares of the company in 1995) were transferred to one Mohammed A. Kothawala in the year 2005. This transfer appears to be fraudulent as there is apparent difference in the signature of the seller used on the transfer deed and that available on the specimen signature records (as per the signature cards post IPO allotment obtained from the company). Mr. Mohammed A Kothawala subsequently dematerialized the shares, thus transferred to him {Demat Request Number (DRN) 224314 dated July 6, 2005}. Since the original share certificate was in the possession of Ms. Dipika Hasmukh Gandhi, it can be presumed that Mr. Mohammed A. Kothawala had surrendered fake share certificates for the purpose of dematerialization/transfer of the shares. Ms. Dipika Hasmukh Gandhi (who would not have been aware of the fraudulent transfer) applied for dematerialization of her shares vide DRN No. 279344 dated April 17, 2008. Ms. Dipika Hasmukh Gandhi apparently received a letter dated May 30, 2008, from the company stating that it had rejected the demat request stating that certificate received already stands dematted. However, the company credited the demat account of Ms. Dipika Hasmukh Gandhi through an off-market credit from the account of Mr. Mohammed A. Kothawala. There is also a letter addressed by the company to Ms. Dipika Hasmukh Gandhi in this regard (a copy of which was also marked to the noticee). It is noted that, subsequently, the noticee sent a rejection memo dated June 3, 2008, to the depository participant of Ms. Dipika Hasmukh Gandhi viz. M/s Pravin Ratilal Share and Stock Broker Limited conveying its rejection of the demat request of Ms. Dipika Hasmukh Gandhi on the ground

“original certificates present are those for which the duplicates have already been issued”. It was further observed that Ms. Dipika Hasmukh Gandhi’s name was not figuring in the list of persons who had received dividend in the year 2007. The above mentioned transfers were all off market transactions as seen from the transfer deeds. They were *prima facie* found to be fraudulent on account of the fact that the signature on the transfer deeds that were used to transfer the shares of genuine investors did not match with their specimen signatures available as per the company records (i.e the record of the specimen signature cards that were available with the company viz. Initial Public Offer (IPO) signature records, signatures of the genuine investors on the transfer deed documents etc).

10. Details of some of such persons to whom shares were fraudulently transferred, along with their relationship with the directors/promoters of the company are given below:

Sr No	Name	Relationship with the company/promoters
1	Mr. Zafar Yunus Sareshwala/ Mr. Talha Yunus Sareshwala/ Mr. Uves Yunus Sareshwala	Brothers and promoter of the company
2	Mr. Mohammed Yunus Sareshwala	Belong to promoter group of the company and father of persons at Sr. No.1
3	Smt Saleha Y Sareshwala	Belong to promoter group of the company and mother of persons at Sr. No.1
4	Master Habib Zafar Sareshwala, Master Ahmed Zafar Sareshwala and Miss Khadija Zafar Sareshwala (Minors)	Belong to Promoter group of the company and the children of Mr. Zafar Yunus Sareshwala –
5	Master Umar Uves Sareshwala, Miss Fatema Uves Sareshwala and Miss Asma Uves Sareshwala (minors)	Belong to the promoter group of the company and children of Mr. Uves Yunus Sareshwala – Minor
6	Miss Sumaiya Talha Sareshwala and Miss Qudsiya Talha Sareshwala	Belong to the promoter group of the company and daughters of Mr. Talha Yunus Sareshwala – Minor
7	Mr. Mansuri Iftekar M Yusuf	Admittedly, an ex - employee of the company
8	Mr. Aslamkhan R Pathan	Admittedly, an ex - employee of the company
9	Mr. Mohammed Alibhai Kothawala	Admittedly, Ex – Munim of the company. He has also compensated genuine investor wherein the fraudulent transfer had taken place in the name of Mr. Talha Sareshwala
10	Mr. A Hameed Gaffar Memon	Compensated by Mr. Mohammad Alibhai Kothawala
11	Miss Fatema M Kothawala	Compensated by Mr. Mohammed Alibhai Kothawala

12	Mr. Mukhtar Y Kothawala	Compensated by Mr. Mohammed Alibhai Kothawala
13	Mr. Maksud Y Kothawala	Compensated by Mr. Mohammed Alibhai Kothawala
14	Mrs Amena M Kothawala	Compensated by Mr. Mohammed Alibhai Kothawala
15	Mr. Yusuf U Kothawala	Compensated by Mr. Mohammed Alibhai Kothawala
16	Miss Mariyam Y Kothawala	Related to Mr. Yusuf U Kothawala and having the same address as Mr. Yusuf U Kothawala; Compensated by Mr. Mohammad Alibhai Kothawala
17	Mr. Nasir Malik	Neighbor of Mr. Zafar Sareshwala
18	Mr. Gulam Rasul Bombaywala	Compensated by Mr. Mohammad Alibhai Kothawala
19	Ms. Shirin T Sareshwala	Shares transferred jointly with Ms. Mariyam Y Kothawala

11. The alleged fraudulent transfers involving the aforesaid persons are mentioned below:

(i) In Serial No. 1 and 4- Mr. Zafar Sareshwala had signed as guardian on behalf of his minor son (Master Habib Zafar Sareshwala) and fraudulently transferred 100 shares (Transfer Deed No. 130127) of Mr. Bipinchandra G Patel on August 4, 2005 and dematerialised the same on September 21, 2005 (DRN No. 370579). When Mr. Bipinchandra G Patel (who was not aware of the fraudulent transfer) applied for dematerialization of his shares, his demat request (DRN No. 9571) was rejected by the noticee on October 17, 2006 and he was compensated through an off-market transfer from the account of Mr. Mohammed Alibhai Kothawala (Ex-employee of the company).

(ii) Similarly, serial no. 1- Mr. Talha Yunus Sareshwala fraudulently transferred 600 shares (Transfer Deed No. 129917) of Mr. Hajimohammed M Rinchniwala on July 19, 2005 and dematerialized the same on August 13, 2005. When Mr. Hajimohammed M Rinchniwala (who was not aware of the fraudulent transfer) applied for dematerialization of his shares, his demat request (DRN No. 1780942) was rejected by the noticee on March 9, 2007 and he was compensated through an off-market transfer from the account of Mr. Mohammed Alibhai Kothawala (Ex-employee of the company).

(iii) For example, in Serial No. 1 and 5- Mr. Uves Sareshwala had signed as guardian on behalf of his minor son (Master Umar Uves Sareshwala) and fraudulently transferred 300 shares (Transfer Deed No. 129905) of Mr. Hasmukh Rasiklal Gandhi on July 19, 2005. and dematerialized the same on August 26, 2005 (DRN No. 367123). When Mr. Hasmukh Rasiklal Gandhi (who was not aware of the fraudulent transfer) applied for dematerialization of his shares, his demat request (DRN No. 279345) was rejected by the noticee on June 4, 2008 and he was compensated through an off-market transfer from the account of Mr. Mohammed Alibhai Kothawala (Ex-employee of the company).

(iv) Similarly, in Serial no. 9, Mr. Mohammed A Kothawala fraudulently transferred 100 shares (Transfer Deed No. 304620) of Smt Urmila M Kachhapatel and Mr. Madhusudan M Kachhapatel on August 30, 2005 and dematerialized the same (DRN No. 236298) on October 13, 2005. When Smt Urmila M Kachhapatel and Mr. Madhusudan M Kachhapatel (who was not aware of the fraudulent transfer) applied for dematerialization of his shares, his demat request (DRN No. 266978) was rejected by the noticee on March 23, 2006 and he was compensated through an off-market transfer from the account of Mr. Talha Yunus Sareshwala (promoter of Parsoli).

(v) Mr. A Hameed A Gaffar Memon (Serial no. 10) fraudulently transferred (Transfer Deed No. 372328) 100 shares on September 20, 2005 held in the name of Mr. Paresh S Barot and dematerialized (DRN No. 239198) the same on October 22, 2005. When Mr. Paresh S Barot (who was not aware of the fraudulent transfer) applied for dematerialization (DRN No. 1118832) of his shares, the said request was rejected by the noticee on October 17, 2006 and he was compensated through an off-market transfer from the account

of Mr. Mohammad Alibhai Kothawala (Ex–employee of the company).

(vi) Similarly, Serial no. 11 and 12- Ms. Fatema M Kothawala and Mr. Mukhtar Y Kothawala fraudulently transferred 200 shares (Transfer Deed No. 105723) of Mr. Vikas Shah on July 19, 2005 and dematerialized (DRN No. 228641) the same on August 20, 2005. When Mr. Vikas Shah (who was not aware of the fraudulent transfer) applied for dematerialization (DRN No. 3867826) of his shares, the said request was rejected by the noticee on March 9, 2007 and he was compensated through an off-market transfer from the account of Mr. Mohammad Alibhai Kothawala (Ex–employee of the company).

(vii) In Serial no. 12- Mr. Mukhtar Y Kothawala fraudulently transferred 500 shares (Transfer Deed No. 130035) of Mr. Kamlesh Ambalal Patel on July 29, 2005 and dematerialized (DRN No. 231777) the same on September 14, 2005. When Mr. Kamlesh Ambalal Patel (who was not aware of the fraudulent transfer) applied for dematerialization (DRN No. 22948) of his shares, his demat request was rejected by the noticee on June 9, 2006 and he was compensated through an off-market transfer from the account of Mr. Mohammad Alibhai Kothawala (Ex–employee of the company).

(viii) Similarly, in Serial no. 13- Mr. Maksud Y Kothawala fraudulently transferred 300 shares (Transfer Deed No. 130106) of Mr. Sachin Arvindbhai Soni on August 04, 2005 and dematerialized (DRN No. 233352) the same on September 21, 2005. When Mr. Sachin Arvindbhai Soni (who was not aware of the fraudulent transfer) applied for dematerialization (DRN No. 14996) of his shares, his demat request was rejected by the noticee on October 17, 2006 and he was compensated through an off-market transfer from the account of Mr. Mohammad Alibhai Kothawala (Ex–employee of the company).

(ix) Serial no. 13 and 14- Smt. Amena M Kothawala and Mr. Maksud Y Kothawala fraudulently transferred 400 shares (Transfer Deed No. 105744) of Mr. Mool Singh on July 19, 2005 and dematerialized (DRN No. 228640) the same on August 20, 2005. When Mr. Mool Singh (who was not aware of the fraudulent transfer) applied for dematerialization (DRN No. 985939) of his shares, his demat request was rejected by the noticee on October 17, 2006 and he was compensated through an off-market transfer from the account of Mr. Mohammad Alibhai Kothawala (Ex-employee of the company).

(x) Serial no. 15 and 16- Mr. Yusuf U Kothawala and Smt Mariyam Y Kothawala fraudulently transferred 600 shares (Transfer Deed No. 130046) of Mr. Bhavesh Vasantlal Dalal on July 29, 2005 and dematerialized (DRN No. 231780) the same on September 14, 2005. When Mr. Bhavesh Vasantlal Dalal (who was not aware of the fraudulent transfer) applied for dematerialization (DRN No. 759) of his shares, his demat request was rejected by the noticee on February 09, 2007 and he was compensated through an off-market transfer from the account of Mr. Mohammad Alibhai Kothawala (Ex-employee of the company).

(xi) Serial no. 16 and 19- Smt Mariyam Y Kothawala and Ms. Shirin T Sareshwala fraudulently transferred (Transfer Deed No. 105705) 200 shares of Mr. Roopkumar Issrani on July 19, 2005 and dematerialized (DRN No. 228642) the same on August 20, 2005. When Mr. Roopkumar Issrani (who was not aware of the fraudulent transfer) applied for dematerialization (DRN No. 3807081) of his shares, his demat request was rejected by the noticee on February 17, 2007 and he was compensated through an off-market transfer from the account of Mr. Mohammad Alibhai Kothawala (Ex-employee of the company).

(xii) Serial no. 17- Mr. Nasir Malik fraudulently transferred 1000 shares (Transfer Deed No. 449130) of Mr. B.J. Patel on June 6, 2005. These certificates so fraudulently transferred were then dematerialized by Mr. Nasir Malik vide DRN No. 223643 on July 14, 2005. Further, perusal of the transfer register indicates that Mr. Nasir Malik's address is 11 - A Faize Mohammedi Society, Narayannagar Road Paldi , Ahmedabad - 380007. It is noted that Mr. Zafar Sareshwala's address is 6 Faize Mohammedi Society, Narayannagar Road Paldi, Ahmedabad – 380007.

(xiii) Serial no. 18, Mr. Gulamrasul M Bombaywala fraudulently transferred 200 shares (Transfer Deed No. 105667) of Mr. Dipak kumar Rashiklal Shah on June 28, 2005 and dematerialized (DRN No. 224618) the same on July 22, 2005. When Mr. Dipak kumar Rashiklal Shah (who was not aware of the fraudulent transfer) applied for dematerialisation (DRN No. 3650988) of his shares, his demat request was rejected by the noticee on February 17, 2007 and he was compensated through an off-market transfer from the account of Mr. Mohammad Alibhai Kothawala (Ex–employee of the company).

12. It was also observed that in some cases, the shares were fraudulently transferred to certain accounts such as Mr. Mohammad Alibhai Kothawala (Ex–employee of the company) and the compensation to the investors have also gone from the same account. The same is illustrated as under:

Mr. Mohammed A Kothawala fraudulently transferred 100 shares (Transfer Deed No. 251225) of Mr. Dipakbhai S Shah on August 30, 2005 and dematerialized (DRN No. 236298) the same on October 13, 2005. When Mr Dipakbhai S Shah (who was not aware of the fraudulent transfer) applied for dematerialization (DRN No. 23756) of his shares, his demat request was rejected by the noticee on June 9, 2006 and he was compensated through an off-market transfer from the account of Mr Mohammad Alibhai Kothawala (ex-employee of the company).

13 From the above cited instances, a clear nexus can be seen between the persons into whose account the shares were fraudulently transferred and the persons who were compensating the affected investors. It is also observed that although persons such as Mr. A Hameed Gaffar Memon, Mr. Mansuri Iftekar M Yusuf, Mr. Aslamkhan R Pathan, Mr. Mohammed Alibhai Kothawala, Mr. Nasir Malik, Mr. Gulam Rasul Bombaywala etc. referred to above do not directly belong to the promoter group as declared by the company, they are front entities, since they are acting at the behest of the promoters and the same is evident from the instances cited above, which adequately explains their relationship with the promoter group of the company. Most of the fraudulent transfers took place in 2005. These transfers were approved by the transfer committee of the company, which constituted mainly of the promoters of the company. The noticee did not dispute the above observations. The only contention is that it had no role in the alleged fraudulent activities of the company. Since the noticee, does not dispute the alleged fraudulent activities, I do not consider it necessary to explain all the alleged violations committed by the company in detail, in the present proceedings. The aforesaid violations committed by the company are dealt separately by SEBI and, vide order dated February 20, 2009, SEBI prohibited the company and its directors from accessing the securities market and from buying, selling or dealing in securities till further orders, as stated therein.

14. Besides, shares were also fraudulently transferred to the names of the minor children of the promoters of the company and in this regard, the promoter directors of the company had signed the transfer deeds as guardians against the names of the minors.

15. Further indicators to such alleged fraudulent share transfers could be seen from the observation made that although some of the investors were residing at different places in the country like Indore, Mumbai, Rajkot etc, the transfer deeds used for registering such alleged fraudulent transfers were purchased and issued from one place i.e Ahmedabad. It appeared that the transfer deeds were apparently purchased in bulk and the same was evident from the manner in which the transfer deeds mostly bore continuous serial

numbers. Further, many of the transfer deeds through which the alleged fraudulent transfers took place were apparently handwritten by the same person and also had common set of witnesses. The transferee (buyer) addresses were predominantly Ahmedabad based.

16. According to me, fraudulent transfers in the shares of the company, as mentioned in the show cause notice could have been avoided, if the noticee had carried out its functions and duties in accordance with law, taking into account the interests of the shareholders. The fraudulent transfers took place at a time when the noticee was acting as the share transfer agent of the company. Admittedly, the share transfer agent activity was transferred to the noticee, pursuant to 2003 and thereafter, the noticee was authorized to carry out the said activity. Therefore, post 2003, the noticee was required to function as expected of a prudent share transfer agent and was obliged to fulfill its commitment in a prompt, ethical and professional manner and maintain high standards of integrity in the conduct of its business. The noticee should have collected all the relevant documents from the company in order to carry out its duty as a share transfer agent in terms of the provisions of the said Regulations. This is also a statutory requirement. His role as a share transfer agent is vital and he shall exercise adequate care, caution and due diligence before dematerialization of securities.

17 One of the observations of the inspection was that the noticee functioned as the Registrar and Transfer Agent of the company without taking possession of the records of signature/signature cards which are essential for the purpose of all matters *inter alia* relating to transfer of securities. In terms of Regulation 53A of the DP Regulations read with SEBI circular dated December 27, 2002, all matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point either in-house by the company or by share transfer agent registered with SEBI. This has to be viewed in the context of the admitted position that the noticee was mandated to carry out the share transfer agent activity of the company pursuant to 2003. Needless to say, either the company transfers all the relevant records to the noticee or the noticee ensures all the documents reaches it for carrying out its functions

and duties as envisaged under the provisions of the said Regulations and the circular. Consolidation of documents at a single place is also significant, since in terms of clause 7 of the code of conduct specified in schedule III of the said Regulations, the Registrar to an Issue and Share Transfer Agent shall not reject the dematerialization/rematerialisation requests on flimsy grounds and that such requests could be rejected only on valid and proper grounds and supported by relevant documents. The activities of a share transfer agent can be exercised in a judicious manner only if he is in possession of the relevant documents, as statutorily required. The contention of the noticee is that the company had retained the specimen signature records with itself and that as and when the requests DRF/transfer deed received from shareholders, the same were sent to the company for signature verification. Further, the claim of the noticee that, it had requested the company to handover all documents would not weigh much in the facts and circumstances of the case, wherein the noticee merely stood as a spectator during fraudulent transfer of shares. According to the noticee, the DRF/transfer deed requests were processed only after the receipt of specific confirmation from the company regarding signature verification. This very contention implies that the noticee was solely relying upon the company in respect of share transfers. It may be noted that the Share Transfer Committee of the company mainly consisted of its promoters. If the company was not forwarding all required documents, the noticee, having regard to the duties casts upon it, should have reported the same to SEBI. No such effort was taken by the noticee. The noticee cannot take shelter under the pretext of certain requests sent to the company, especially when he is mandated to look into the documents before taking a decision in respect of transfer of shares. This is the period when large number of share transfers in the company (which appears to be fraudulent in nature) was happening. The very fact that the company did not hand over the signature records to the noticee, should have raised a suspicion in its (noticee) minds. The noticee not only did not report the same to SEBI but also processed the requests as per the decisions of the company.

18. Besides, in respect of certain requests for dematerialization, admittedly, the noticee was in receipt of copy of letters addressed by the company (to the affected investors), wherein the company had

compensated them by way of off market transfer of shares on a consistent basis. During the period when the noticee was acting as a share transfer agent of the company, certain demat requests were received by it which were sent to the company, as according to the noticee, the company was in possession of records like signature cards. Some of the requests were rejected by the company and in one such letter dated May 30,2008, (in the letterhead of the company), a copy of which was marked to the noticee, I note that the company informed that *“above referred DRN has been rejected by our R&T under code -13 misc. –“certificate received is already stands demated in our system. Please contact company for further details”*.

We have taken necessary steps to compensate you considering that your request seems to be genuine. We have already credited above referred accounts by off-market transactions. Xerox copy of delivery slips is enclosed and requests you to verify with your DP. Hence your problem is resolved”.

19. The very act of compensating the shareholders should have alerted the noticee. Why should any person compensate an investor unless that person is at fault in some manner? The noticee in the present case blindly acted on the version of the company. The inspection conducted by SEBI, further observed that the noticee was giving a different reason for the rejection of their demat requests as, *“Original certificates present are those for which the duplicate have already been issued.”* I find that this is in stark contradiction with the reasons given by the company for rejecting the demat requests. The authorized representative of the noticee in his statement dated July 16, 2008 (to SEBI) admitted that the noticee did not possess any records to suggest that duplicate certificates had actually been issued by the company in respect of those cases where the demat requests were rejected on the ground, *“Duplicate certificates already issued.”* This is in sheer violation of the code of conduct (clause 7) specified in Schedule III of the said Regulations, wherein a registrar to an issue and share transfer agent shall not reject the dematerialization/rematerialisation requests on flimsy grounds *and that such request could be rejected only on valid and proper grounds and supported by relevant documents*. Admittedly, the noticee was not in possession of any documents in support of the reason advanced to

justify the issue of the duplicate certificates by the company. All these irregular activities/ misguiding communication could have been avoided had the noticee exercised due diligence, maintained high integrity and collected all relevant and required documents in respect of its activities as a share transfer agent. A plain reading of such letters wherein the company admits the fact that the demat requests of the investors are genuine, should have alerted the noticee with regard to the activities carried out by the company and its management in respect of transfer of shares. Besides, the noticee should have looked into the matter when there was no apparent reason for the company to compensate large number of investors when the dematerialization requests of these investors were rejected for reasons, *“Certificate received is already stands dematted in our system.”* Atleast, at this juncture the noticee, should have taken appropriate steps and exercised adequate due diligence and care in this regard, which it prima facie failed to do so. Besides, how could the noticee give a different reason from that of the company in respect of the rejection of dematerialization requests? The explanation furnished by the noticee for citing a different reason other than that given by the company cannot be accepted. Duplicate certificates are in the normal course issued after complying with certain basic procedures such as execution of indemnity bond, lodging of First Information Report with the police, issue of advertisement by the company etc. The noticee could not establish that in the present matter the above mentioned procedures/documents were followed. Further, Serial No. 20 of Uniform Guidelines to be followed by a share transfer agent in the matters relating to issuance of Duplicate certificates and for handling and processing of transfer documents stipulated vide SEBI Circular RTI Circular No. 1 (2000-2001) dated May 9, 2001 states that *“In case duplicate shares have already been issued, date of issue of duplicates, and name and address of the person to whom the duplicates have been issued and copy of indemnity bond based on which duplicates were issued, are to be provided”*. It was observed that while the noticee had rejected the demat request on the ground that *“duplicate shares have already been issued”*. However, the noticee has not complied with the requirements as stated in Serial No. 20 of Uniform Guidelines to be followed by share transfer agent for handling and processing of transfer documents.

20. The incorrect information given by the noticee are serious in nature considering that it was from the account of these investors that shares were prima facie fraudulently transferred to the accounts of the promoters/front entities. Some of such instances (wrong rejections confirmed by the noticee to the genuine investors) can be seen from the illustrations explained as under:

Sl No.	Date of Demat Request Recd.	DRN No.	Qty of Shares	1st Holder Name(genuine investor)	2nd Holder Name	Date of fraudulent transfer	No of shares	Name of the promoter of the company/front entity	Date of confirmation of demat by transferee(promoter/front entity)	Date of Demat Request Rejected(genuine investor)	Demat Rejection Reason
1	15-Jul-2005	276369	500	Sh Vinodbhai Ramjibhai Parmar		21-June-2005	500	Sh Aslamkhan R Pathan	7-July-2005	17-Aug-2005	Signature mismatch
2	14-Jul-2005	109283	1500	Sh Arbab Ahmed Bharuchi		19-July-2005	1500	Sh. Talha Sareshwala	13-Aug-2005	17-Aug-2005	Signature mismatch
3	20-Jun-2005	26693	300	Sh Gulam Rasul Abdul Latif Shaikh		14-June-2005	300	Sh Mohammed Alibhai Kothawala	7-July-2005	06-Aug-2005	Signature mismatch
4	1-Jul-2005	60240	300	Sh Manish K Bhavsar	Mrs Nayana Manish Bhavsar	28-June-2005	300	Sh Mohammed Alibhai Kothawala	14-July-2005	17-Aug-2005	Signature mismatch
5	14-July-2005	2618801	300	Sh Maimuna Mohd Siddiq Chaus		14-June-2005	300	Sh Mohammed Alibhai Kothawala	07-July-2005	20-Aug-2005	Signature mismatch
6	08-Aug-2005	21960	100	Sh Dipak Shankarlal Shah		30-Aug-2005	100	Sh Mohammed Alibhai Kothawala	13-Oct-2005	07-Sep-2005	Signature mismatch

It may be noted that on July 14, 2005 (serial No. 2), the noticee received the demat request of Mr. Arbab Ahmed Bharuchi and the same was rejected on August 17, 2005 for reason "signature mismatch". However, it was observed that the shares were prima facie fraudulently transferred to Mr. Talha

Sareshwala (a promoter) on July 19, 2005 and were also dematerialized on August 13, 2005. Thus, on August 13, 2005, the noticee had in its possession records indicating that shares in the name of Mr. Arbab Bharuchi were transferred and also dematerialized in the name of Mr. Talha Sareshwalawa. Yet, the noticee rejected the demat request of Mr. Arbab Bharuchi and issued a rejection memo to the investor by stating the reason in the rejection memo as "signature mismatch". Therefore, the reason for rejection given i.e. "signature mismatch" is incorrect taking into account that shares were not lying in the name of Mr. Arbab Ahmed Bharuchi, but actually were lying in the name of Mr. Talha Sareshwala. These instances indicate that even though the noticee was not in possession of the signature records, it was well aware of the fraudulent transfers registered in the names of promoters/front entities. Had it not been so, the noticee would not have rejected the above demat requests of the genuine investors on the ground "signature mismatch". Further, considering that both the demat confirmation in the name of Mr. Talha Sareshwala (fraudulent transfer) and rejection of the demat request of Mr. Arbab Bharuchi (genuine investor) had taken place in August 2005, the role of the noticee in giving wrong reasons while rejecting the demat request of Mr. Arbab Bhruchi only reinforces doubt about the integrity of the noticee in such matters. Thus, prima facie the noticee not only failed to exercise due diligence but has also acted in concert with the company in its alleged fraudulent activities.

21. The submission of the noticee that it had presumed that only one set of share certificate might have been issued by the company prior to 2003 before assigning physical registry to it would not stand in the eye of law. Had the noticee collected and maintained all the documents in respect of the share transfer activities, it could have prevented the irregularities.

22. Similarly, when the inspecting team perused the relevant records of Mr. Javed Sonalkar, another investor from whose account shares were fraudulently transferred, the following were observed:

Date of Demat Request Recd.	DRN No.	Qty of Shares	1st Holder Name (genuine investor)	Date of fraudulent transfer	No of shares	Name of the promoter of Parsoli/front entity	Date of confirmation of demat by transferee (promoter/front entity)	Date of Demat Request Rejected (genuine investor)	Demat Rejection Reason
20-Jul-2006	1003811	1000	Mr. SONAL KARKAR JAVID ISA	04-Aug-2005	1000	Mr. Talha Sareshwala (Promoter)	14/09/2005	19th February 2007	Signature mismatch

It was observed that shares of Mr. Javed Sonalkar were fraudulently transferred in the name of Mr. Talha Sareshwala (promoter of the company) on August 4, 2005. These shares were further dematerialized in the name of Mr Talha Sareshwala on September 14, 2005. When Mr Sonalkar presented the shares for demat vide DRN No. 1003811 on July 20, 2006, the request was rejected on the ground of “signature mismatch” even though as on the date of the demat rejection, the noticee was aware that the shares in question were already dematerialized in the name of Mr. Talha Sareshwala. Mr Sonalkar again raised a demat request viz. DRN No. 1027563 on June 29, 2007 forwarding the same share certificates. This was rejected by the noticee again stating the ground “Certificates not received within 30 days” on September 28, 2007. Finally, when Mr. Sonalkar applied for demat of those shares vide DRN No. 1041094 (DRF No. 838661) on January 31, 2008, the demat request was rejected on the ground “duplicate certificates already issued” on March 26, 2008 even though the noticee was fully aware of the fact that shares in the name of Mr. Sonalkar had been fraudulently transferred to the account of the promoters on September 14 2005 itself. There was also delay in processing of the demat request of Mr. Sonalkar in view of the fact that the noticee was shielding the fraudulent acts of the promoters of the company.

23. In any case, the noticee cannot take a dual stand in the matter by rejecting the demat on the ground of “duplicate certificates already issued” and at the same time having in its record the copy of the letter of the company addressed to the investor wherein the company has admitted the request of the investor as genuine and compensated them. This alone is a strong indicator to have raised questions in the mind of the noticee about the manner in which demat requests were processed by the company and

subsequent rejection notices sent to the investors therein. As a prudent Registrar and Share Transfer Agent, the noticee upon noticing such instances of compensation given to investors and the reasons stated by the company in their letter etc should have insisted from the company for the signature records to be handed over to them or at least questioned the activities of the company in the matter, which was not done at all. In its letter dated October 10, 2008 addressed to SEBI, the company has confirmed that they have not issued any duplicate certificates to investors. In view of the above, the basis on which the above confirmation was given by the noticee while rejecting the demat requests of investors is questionable.

24. Besides, there is another way of ascertaining whether the issuer company had indeed issued duplicate certificates to the investors. Generally, while issuing duplicate certificates, a fresh certificate has to be printed and the same is issued under a new certificate number. Further, other procedures relating to issuance of duplicate certificates such as execution of indemnity bond by the investor who has demanded issuance of duplicate certificate, advertisements issued by company in this regard etc have to be complied with before issuing the duplicate certificate. These records were not available with both the company and the noticee. I note that the SEBI inspecting team verified records of certain investors i.e, DRF forms (of genuine investors), transfer deed used for fraudulent transfer etc., to compare the certificate number mentioned on the DRF form of the genuine investor with that on the DRF form of the transferee (through fraudulent transfer). It was observed that the certificate numbers mentioned therein were the same, suggesting that no duplicate certificate was issued by the company. On the contrary, I am of the *prima facie* view that fake certificates have been printed and issued by the company to register the fraudulent transfers of the buyers shown in the transfer deeds. Several such instances observed have been illustrated in the annexure attached to the show cause notice dated August 22, 2008 issued to the noticee. Thus, it appears that the noticee had been furnishing a wrong reason for rejecting the dematerialization requests. In any case, when such dematerialization requests rejections were made by the noticee on a continuous basis citing the above reason, no efforts appear to have been

made by it to ascertain the factual position regarding issue of duplicate share certificates, if any by the company.

25. Further, the fact that the transfer deeds used for registering the fraudulent transfers were purchased from Ahmedabad in bulk should have aroused suspicion in the minds of the noticee. The fact that transfer deeds purchased in bulk from Ahmedabad so as to transfer shares of genuine investors located in cities/towns other than Ahmedabad coupled with transfers by way of off market transactions, gross variation in sellers signatures among other facts are sufficient enough to suggest even to an ordinary person that some mischievous activities were afoot. It cannot be a mere coincidence that an investor hailing from Amreli buys a transfer deed from Ahmedabad bearing serial no 251129, or investor hailing from Baroda buying a transfer deed no. 251122 from Ahmedabad or TD bearing No 251126 purchased from Ahmedabad by an investor from Bhanvaad or TD bearing No 251124 purchased from Ahmedabad by an investor from Gondal. These instances would give rise to an inference that the noticee prima facie colluded with the company or acted in gross violation of its duties as envisaged under the provisions of the said Regulations. The noticee is evidently not guilty of sheer negligence alone. But, *prima facie*, these are grave instances where the company had fraudulently transferred shares to its own group at the cost of genuine investors. In view of the above, the cases cited by the noticee are not applicable to the facts and circumstances of the present case.

26. Besides, instances of glaring deficiencies that were prima facie observed (by the inspecting authority) on the part of the noticee while processing the fraudulent transfer requests have been brought out in the show cause notice. The noticee had registered the transfer of shares in cases where transfer deed is without signature of the buyer, the folio belongs to joint holders but the transfer deed bearing forged signature indicated the name and signature of one holder, transfer deed does not have signature and address details of witness etc. In some cases, the noticee had also dematerialized shares of the company even though the signature on the demat request form was not tallying with that on the transfer deed. For e.g, against the name of Mr. Mohammed A Kothawala, the signature of Mr. Gulam Rasul Bombaywalla appeared on the physical transfer deed.

However, the same has been dematerialized by the noticee under the name and signature of Mr. Mohammed A Kothawala. I also note that the noticee was rejecting the demat requests submitted by genuine investors citing flimsy reasons, whereas, the requests received from the buyers who got the shares fraudulently transferred in their names were processed, despite gross inconsistencies in their documents. This is seen from the specific observation of dematerialization requests of Mr. Mohmmad Kothawala as cited above.

27. I also note various cases of delay in dematerialization. In some cases, the noticee has stated that the DRF was sent to the company directly. Even in these cases, the noticee should have followed up with the company. No supporting documentary evidence has been produced by the noticee in this regard. Regarding the DRFs, where the noticee has admitted that it had received them directly from the depository participant, the noticee has generally stated that it has sent the DRF to the company for signature verification within a few days and thereafter had reminded the company orally. However, no documentary evidence supporting the timely dispatch of the DRFs to the company and periodic follow-up with the company has been produced. Further, since the certificates were already dematerialized in the system in the name of the promoters and 'front entities', I am of the view that there was no necessity on the part of the noticee to have forwarded the DRFs of the genuine investors to the company for verification in the first place. In these circumstances, the noticee could have easily rejected the demat request of investors on their own after verifying the details available in their system stating that the certificates have already been dematerialized. However, the noticee continued to forward the requests of investors to the company *prima facie* to misguide the investors in this regard. Thus, even if the demat requests of genuine investors are received by the noticee and forwarded by them to the company, the same serves no purpose, as the shares of the genuine investors already stands transferred and also dematerialized to the accounts of the promoter group/front entities apparently by fraudulent means. From the above observation, I am of the view that the noticee has concocted a false story about the demat requests pending at the company's end. It is fairly established that as on the dates when the noticee rejected the demat requests of the investors, these shares

were already transferred/dematerialized in the names of promoters and 'front entities'. Yet, the noticee employed tactics to misguide the above investors by sending rejection memos to them citing totally different reasons such as "signature difference" among other reasons, instead of communicating the real reason (which is that the shares already stands transferred and also dematerialized in the system). Thus, this is an apparent case of the noticee misguiding the investors. I am therefore, *prima facie* inclined to believe that noticee has been hand in glove with the management of the company in their fraudulent activities. The necessity of sending the DRFs to the company arises only when the certificates received have not already been dematerialized. These details are easily ascertainable from the data base maintained by any Share Transfer Agent. It appears that the noticee was aware of the fraudulent transfers which had earlier been executed and was sending the DRFs to the company so that it could compensate the investors, subsequent to which the noticee would reject the DRF. Therefore, the stand taken by the noticee that the delay was on account of the company may not hold good because in such cases, the noticee need not have sent the DRFs to the company at all. In any case, even if the company had actually instructed the noticee, the fact remains that, it possessed the information as on the date of demat rejection that the share certificates were dematerialized in the names of other investors. Therefore, the noticee has intentionally furnished wrong rejection reasons in respect of demat requests lodged by genuine investors.

28. In the present case, the typical ingredients which are necessary to prove fraudulent transfer of securities are obvious. From the facts and circumstances narrated above, it is *prima facie* established that the shares of genuine investors were fraudulently transferred to the accounts of the promoters of the company and other related entities linked to the promoter group. *Prima facie*, the confidence of several genuine and unsuspecting investors has been eroded due to the fraudulent act committed by the company. The noticee as a share transfer agent to the company played their role as active accomplice in such unethical activities committed by the company and its management. As regards the noticee's submission that the wrong rejection memos were issued to investors based on such confirmations given by the company, I am not inclined to accept their

submission. To my mind, this appears to be a futile attempt on the part of the noticee to shift their responsibility or take shelter behind the fraudulent act committed by the company and its management. Such untenable arguments put forth by the noticee failed to convince me of their arguments. I cannot lose sight of the fact that the noticee has furnished wrong rejection reasons to investors despite having sufficient records in its possession that their shares stand already dematerialized in the system. Yet, the noticee was furnishing false rejection reasons, as amply illustrated in the paragraphs above. Such acts on the part of a registered market intermediary erode the confidence of investors in the securities market. The investors were misguided by the noticee in respect of their holdings in the company. Prima facie, this also establishes that the noticee aided and abetted the management of the company in the fraudulent share transfers.

29. The noticee had *inter alia* informed that it did not possess the signature records of the company and had produced a letter dated August 16, 2005 from the company in support of its submission. The company in its statement dated July 11, 2008 had however admitted that it possessed the signature records. The demat requests were processed i.e. confirmed /rejected by the noticee based on instructions received from the company. However, glaring deficiencies were observed on the part of the noticee while processing the fraudulent transfer requests. In the illustrations cited below, the buyers name in the transfer deeds are the persons belonging to the promoter group or the “front entities” of the promoters. This goes to prove that despite deficiencies in the transfer deeds and other related documents, the noticee went ahead with confirming such transfer request of the buyers, since these were fraudulent transfers registered in the names of the “front entities” as buyers. Instances can be seen as under:

Deficiency observed	TD details
Transfer deed without signature of the buyer	TD no.105794 of seller Mr. Prabhudas P Prajapati– Buyer – Mr. Mohammad Alibhai Kothawala TD no.251129 of seller Mr. Himatlal Gafurbhai Ruparelia- Buyer Mr. Ghulam Rasool Bombaywala
The folio belongs to joint holders, whereas TD bearing forged signature shows name and signature of one holder.	Folio no – V00223 TD no. 304572 of seller Mr. Vijaykumar T Shah.- Buyer Mr. Aslam Khan R Pathan

TD does not have signature and / or address details of witness	<p>TD no.251138 of seller Mr. Hitesh N Shah.- Buyer Mr. Mansoori Iftakar Yusuf</p> <p>TD no.105708 of seller Rajudevi H Jain – Buyer Mariam Y Kothawala and Shirin T Sareshwala.</p> <p>TD no.105709 of seller Mr. Ramesh A Patel.- Buyer – Ms Mariam Y Kothawala and Shirin Sareshwala</p>
Different Signature – Against the name of Mr. Mohammed A Kothawala , the sign of Mr. Gulam Rasul Bombaywalla appears on the physical transfer deed. However the same has been dematerialized under the name and signature of Mr. Mohammed A Kothawala.	<p>TD no. 304888 (not clearly visible) of seller Mr. A D Mistry – Buyer Mr. Mohammad Kothawala</p> <p>TD no. 304534 of seller Mr. Bhavin M Khamar</p>

30. Several instances of delay in processing the demat requests of investors were observed suggesting that the *prima facie* the noticee had failed to dematerialize the shares in time. The delay in demat was on account of the fact that the requests were sent to the company for confirmation of signature and thereafter, no sincere attempts were seen made by the noticee to follow up on the delay with the company. However, there was generally no delay in confirming the demat requests of those persons who fraudulently got the shares transferred from accounts of genuine investors i.e demat requests of Mr. Mohammad Kothawala, Mr. Talha sareshwala etc. These details were communicated to the noticee in the show cause notice dated August 22, 2008. Thus, I do not have any hesitation to hold that the noticee prima facie violated the provisions of the said Regulations, DP Regulations and the circular dated December 27, 2002 as stated in the show cause notice dated August 22, 2008.

31. Therefore, in the instant case, a deterrent action is necessary to be taken against the noticee in the interest of fostering investor confidence and also to save the investors from possibility of any such future attempts by the entities concerned. I am of the considered view that appropriate directions which are preventive and remedial in its application need to be passed at this stage against the noticee for their aforesaid conduct in respect of its activities as a share transfer agent of the company. The noticee raised a preliminary objection that no emergency situation exists which warrants the

issuance of an interim order in the present case at present. The learned counsel also contended that Section 11(4) of the Act, does not empower SEBI to suspend the certificate of registration of an intermediary without conducting an enquiry, in terms of the Regulations framed there under. My findings in this regard are as under. The provisions of the Act empower SEBI to take appropriate proceedings as mentioned therein depending upon the nature and gravity of the wrong doing. The power to take preventive or punitive measures is implicit. If SEBI feels that immediate preventive action is essential, it can take measures as it thinks fit including restraining persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities. If the facts established in the preliminary inquiry disclose a grave misconduct on the part of an intermediary, SEBI can simultaneously initiate inquiry against such intermediary under the provisions of the Regulations framed therein for imposing any of the penalties specified therein. The introduction of sub section (4) in section 11 and various other provisions is indicative of the legislative intent. The provisions of Sections 11B and 11(4) empower SEBI with authority so as to be able to effectively exercise power and achieve the declared objectives of the Act. This is so, since SEBI has to regulate the market vulnerable to fraud and manipulation, varied situations may arise, all of which cannot be envisaged and there may be an urgent need to pass an order even when an inquiry or investigation is pending. The provisions of the Act are basically intended to protect the interests of the investors and to promote the market. In the present case, as I observed earlier, the noticee prima facie acted in total negligence and in variation of the mandatory requirements as specified in the said Regulations and the DP Regulations. I am of the view that the above conduct of the noticee is detrimental to the safety and integrity of the securities markets and interests of investors. In order to prevent further harm to the investors and the securities market, it is necessary to issue appropriate preventive directions to the noticee.

32. Given the grave consequence of the various acts of omission, misfeasance and negligence of the noticee, prima facie I have serious reservation on entrusting the noticee as important a role as that of a share transfer agent in the securities market. I also am aware that totally prohibiting the noticee from operating in the capital market would cause severe disruption to those investors who are the clients of the noticee in reassigning their holdings.

32 Therefore, in view of the foregoing, I, in exercise of the powers conferred on me in terms of Section 19 read with Sections 11(1),11B and 11(4) of the Securities and Exchange Board of India Act, 1992 hereby prohibit Pinnacle Shares Registry Private Limited from entering into any fresh agreements with client companies in its operations as registrar to the issue and share transfer agent till further orders.

33. I also order the initiation of Enquiry Proceedings in terms of the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 against Pinnacle Shares Registry Private Limited in respect of the alleged violations committed by it while handling the registrar and share transfer agent activities of Parsoli Corporation Limited. Pinnacle Shares Registry Private Limited is at liberty to make its submissions before the Designated Authority (Enquiry Officer) and the said Officer shall conduct the enquiry proceedings in terms of the provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 unhindered by the observations made in this order. The Designated Authority (Enquiry Officer) shall submit the report within three months from the date of this order. The order appointing the Designated Authority (Enquiry Officer) would be issued separately.

34. Having examined the mass of evidence available before me, I have no hesitation in *prima facie* holding that the acts, omission and commission of Pinnacle Shares Registry Private Limited bears all the active ingredients of fraud as defined in Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities) Regulations, 2003. I, therefore, order that an additional show cause notice be also issued to Pinnacle Shares Registry Private Limited calling it to explain why it is not liable for punitive actions under the relevant provisions of the aforesaid Regulations. Such show cause notice shall be issued within fifteen days of this order.

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

K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: February 20, 2009