

SECURITIES AND EXCHANGE BOARD OF INDIA

WTM/GA/28/ISD/09/07

CORAM: G.ANANTHARAMAN, WHOLE TIME MEMBER

IN THE MATTER OF ATLANTA LTD

DATE OF HEARING: 03.09.2007 and 13.09.2007

APPEARANCES:

FOR NOTICEES: Shri Amit Desai, Sr. Advocate
Shri Vinay Chauhan, Advocate
Shri Indranil Deshmukh, Advocate
Shri Rajhoo Bbarot, Managing Director, Atlanta Ltd
Shri G. Radhakrishnan, Director, Atlanta Ltd
Shri Sachin Jain, Company Secretary, Atlanta Ltd

FOR SEBI: Shri S. Ramann, Chief General Manager
Shri Krishnanand R., Deputy General Manager
Shri G. Vijayakrishnan, Assistant Legal Adviser

ORDER

(UNDER SECTIONS 11(1), 11(4) (b) and 11B OF SEBI ACT, 1992)

1.1 By an Ad-interim order dated February 22, 2007 (hereinafter referred to as the 'Ad-interim Order') under section 19 read with sections 11(1), 11(4)(b) and 11B of the Securities and Exchange Board of India Act, 1992 pending investigation and passing of final Order, certain directions were issued inter alia against Atlanta Ltd

and promoters of Atlanta Ltd. Accordingly, Shri Rajhoo Bbarot, Shri Rikiin R Bbarot, Smt Bhavana R Bbarot, Smt Ridhima M Doshi, Rajendra A Barot,(HUF) and Ambalal P Barot (HUF) promoters of the company were directed not to buy, sell or deal in securities of Atlanta Ltd, directly or indirectly, till further directions in this regard. Further, Atlanta Ltd was also directed not to issue any equity shares or any other instruments convertible into equity shares, in any manner, or shall not give effect to any alteration in its capital structure in any manner till further directions. In addition, the Stock exchanges were directed not to approve the listing of convertible warrants and listing of shares issued on conversion till further directions. Also the depositories were directed not to dematerialize the convertible warrants and shares issued upon conversion and not to give effect to the stock split, till further directions and not to give effect to any transfer of shares of Atlanta Ltd. lying in the beneficial owner accounts of the entities mentioned as above.

1.2 The entities/persons against whom the Ad-interim order was issued were given opportunity to file their objections, if any, to the said order within 15 days from the date of the said order at the Securities and Exchange Board of India, SEBI Bhavan, C4-A, G-Block, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051.

2.1 Aggrieved by the said Ad-interim Order, Atlanta Ltd and its promoters viz. Rajhoo Bbarot, Bhavana R Bbarot, Ridhima M Doshi, Rajendra A Bbarot (HUF) and Ambalal P Barot (HUF) filed an appeal before the Hon'ble Securities Appellate Tribunal (SAT). The matter came up for admission before SAT on March 12, 2007. Vide Order dated March 12, 2007, Hon'ble SAT disposed off the matter with a direction that if the appellants filed their objections as envisaged in the impugned order to SEBI within 10 days, SEBI would hear the parties concerned and pass interim order after granting post decisional hearing to the appellants within 3 months from the date of hearing and in any case on or before September 30, 2007.

2.2 Pursuant to the Hon'ble SAT order, Atlanta Ltd and its promoters viz. Rajhoo Bbarot, Rikiin Bbarot, Bhavana R Bbarot, Ridhima M Doshi, Rajendra A Barot (HUF) and Ambalal P Barot (HUF) filed their objections with SEBI on March 20, 2007. Subsequently, upon request, SEBI provided copies of documents which were relied

upon in the Ad-interim Order. An opportunity of personal hearing was also granted on September 3, 2007 and September 13, 2007, which was attended by the following persons:

- ? Shri Amit Desai, Sr. Advocate
- ? Shri Vinay Chauhan, Advocate
- ? Shri Indranil Deshmukh, Advocate
- ? Shri Rajhoo Bbarot, Managing Director, Atlanta Ltd
- ? Shri G. Radhakrishnan, Director, Atlanta Ltd
- ? Shri Sachin Jain, Company Secretary, Atlanta Ltd

Shri Amit Desai made oral submissions on behalf of Atlanta and its promoters and sought relief by withdrawal of the directions of SEBI imposed on the Atlanta Ltd and its promoters viz. Rajhoo Bbarot, Rikiin Bbarot, Bhavana R Bbarot, Ridhima M Doshi, Rajendra A Barot (HUF) and Ambalal P Barot (HUF). Subsequent to the hearing, written submissions were filed on 18/9/2007, 19/9/2007 and 21/9/2007.

3.1 The gist of the submissions made on behalf of Atlanta and the promoters made in writing and orally during the hearing are as under:

a. SEBI has drawn inferences of nexus between Atlanta Ltd and Marwah/Nabera entities based on unconnected facts viz. i). pre-IPO allotment of shares to three entities connected with Manish Marwah/Dilip Nabera group ii) post-IPO allotment of convertible warrants to another three entities connected with Manish Marwah/Dilip Nabera group and iii) cornering of shares by another set of entities of Manish Marwah/Dilip Nabera group upon listing of shares of Atlanta Limited. The pre-IPO placement to the said entities was made through Devam International, a financial consultancy with a history of dealings with the company and post-IPO warrants issue was made through another entity Bondwell Corp Solutions Pvt Ltd. There is no inference of linkage between the trading carried out by Marwah/Nabera entities till end of December, 2006 and announcements made by the company.

b. All the announcements made were either routine disclosure in terms of listing agreement as per the legal obligations and requirements or in the nature of disclosure about future plans of the company. All the disclosures were adequately substantiated and were not fraudulent or misleading or which the company did not believe to be true. The inference of linkage between the announcements made by the company and the price movement of the scrip is erroneous. With regard to announcements to the Stock Exchanges relating to raising of funds for new real estate projects by issuing post-IPO convertible warrants, the company had utilized the funds raised for the stated purpose as disclosed to stock exchanges. The funds, which were raised through said warrants issue were invested in purchasing the real estate property at Goregaon (E), Mumbai and at Malad (E), Mumbai.

c. Funds raised by issue of warrants were neither diverted to various entities nor transferred back to the promoters from whom the warrant subscription money was received. The funds were used for various business purposes during the interim period till the Malad property was being finalized. The funds were transferred to Shri Rahjoo Bbarot pursuant to an MOU dated 15/9/06 entered into by the company with respect to property of Shri Rahjoo Bbarot given on lease to the company Atlanta Ltd. Further, the company denied that it has financed the promoters for subscribing to the warrants. Promoters have arranged the monies at their end, by raising it from various sources without the involvement of the company.

d. With regard to announcement to Business Standard on 5/1/2007, Shri Rajhoo Bbarot (Managing Director of the company) had general discussions about the company's visionary plans and the projects being undertaken by the company and such normal conversation with the reporter on the visionary plans of the company in a routine manner cannot be viewed as disclosure of price sensitive information to newspaper. As per the advice of the Stock Exchange, the same were not notified to the exchanges as plans were not finalized.

e. With respect to announcements to the stock Exchanges related to reporting of very high growth in income and net profit in the financial results for the quarter ended December 31, 2006, there was no inaccuracy in the financial results for the said quarter and the company has been consistently following AS 7 Accounting Standard for Income recognition. Income of Rs. 59.71 Crores is recognized against company's EPC Contract with Balaji Tollways Limited for Nagpur-Kondhali Project and as on 31.12.2006, Company had received Rs. 35.76 Crores from Balaji Tollways Limited and there was a receivable of Rs. 25.04 Crores for work executed.

f. With regard to IPO funds, the company had used funds for the purpose stated in the prospectus and had furnished a copy of Certificate from Punjab National Bank, which is the monitoring agency for utilization of funds, indicating that the funds raised in IPO have been used as per the stated purpose mentioned in the prospectus.

g. Shri Rikiin Bbarot, promoter director has submitted that he had arranged loan from various persons including from Shri Rajhoo Bbarot for subscribing the post-IPO warrant issue and such loans were independent transactions and had nothing to do with the company Atlanta Limited. With regard to the observations at Para 2.35 of the Ad-Interim Order regarding the receipt of money Ideal Toll Road Investments and Operations Private Limited, the same was received towards dividend income payable by Ideal Toll since Rikiin Bbarot was holding 18.58% shareholding in Ideal Toll Road.

h. Promoters viz. Smt Bhavana Bbarot, Smt Ridhima M Doshi, Rajendra A Barot (HUF) and Ambalal P Barot (HUF) have submitted that they were not directors on the board of Atlanta Limited and also not involved / responsible in day to day affairs of the company. They have not made any announcements during the relevant period and have no links or nexus with Manish Marwah / Dilip Nabera group. Only for the reason that they are promoters of the company, they cannot be held responsible for the violations if any committed by the others in the

promoters category. There are no charges specifically made against them except in respect of Smt Bhavana Bbarot at Para 2.35 of Ad-Interim Order regarding the receipt of funds from Ideal Toll Road Investments & Operations Pvt. Limited. The funds were received by Smt Bhavana Bbarot on account of dividend payable to her for the year ended 31.03.2006 as she is holding 23.23% of shareholding in Ideal Toll Road Investments.

i. Section 11(1), 11B and 11(4) of SEBI Act, 1992 do not empower the authority to issue restraint order as mentioned in the Ad-interim Order. Further, dispensation of pre-decisional hearing or denial of urgent post decisional hearing is against the well settled law.

j. There are no connecting circumstances between the announcements made by the company or pre-IPO share placement/post-IPO warrant placement and trading done by Marwah/Nabera group. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which is sought to be established. In this context, Atlanta Ltd had referred to the order of Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Ors { (1991)2SCC716}

4.0 Consideration of Issues

4.1. In the light of Ad-interim Order, I have carefully considered the written submissions and oral submissions made by Atlanta Ltd and its promoters. I propose to deal with the submissions in so far as they are relevant to the case. At the outset, let me recap the brief background of the case and findings as brought out in the Ad-interim Order dated February 22, 2007 as under:

4.2 Atlanta Ltd came out with an Initial Public Offer (IPO) of 43,00,000 shares of Rs. 10 each for cash at a price band of Rs. 130-150 per equity shares through Book Building route during 1/9/2006 to 7/9/2006. Issue price was fixed at Rs. 150/-per

share. The shares of the company were listed on BSE and NSE on September 25, 2006 at around Rs. 170/-. The price of the scrip started rising from October 3, 2006 onwards and touched a high of at Rs. 1446 on 17/1/2007. In view of unusual price movement, SEBI commenced preliminary inquiry. The preliminary inquiry resulted in the following prima facie findings:

- a. Entities connected with Manish Marwah/Dilip Nabera had made large purchases in the scrip of Atlanta Ltd in the Stock Exchanges. It prima facie appeared that Manish Marwah/Dilip Nabera group were linked to company/promoters and were acting in concert since the company had allotted 400000 shares to the entities of same group during pre-IPO issue of shares in the month of December 2005/January 2006 and further another 9 lakh convertible warrants within two months of IPO issue in the month of December 2006.
- b. Misleading and premature announcements relating to the company Atlanta Ltd were made which was possibly done to generate investor interest in the scrip and to shore up its stock price.
- c. The company had reported large growth in revenue for the quarter ended December 2006. It was prima facie found that large growth in the revenue was on account of receipts arising from an infrastructure project which was in an initial stage of implementation. This prima facie raised a suspicion about the accuracy and fairness of accounting policies and practices followed by the company.
- d. The company has not utilized the funds raised by issuing convertible warrants in December 2006 for its stated purpose and same was diverted to various entities including to the promoters from whom subscription money was received. It also appeared that the promoters had proposed to hike shareholding in the company, at a low price compared with the market price, without making payment from their own funds.
- e. IPO funds were being used for purpose other than the stated purpose, which required detailed investigation.

4.3 As per the information available on record of the pre-IPO allottees, post-IPO Warrant allottees and other entities who had substantial secondary market dealings in the scrip of Atlanta Ltd., the following is the position:

4.3(a): The company had allotted 4 lacs shares on private placement basis in the month of December, 2005 and January, 2006 prior to the initial public issue. The following table provides the details in respect of pre-IPO allottees:

Pre-IPO allottees

Allottees	Connection with Manish Marwah/Dilip Nabera
1. Him Realty Private Limited was allotted 2.5 lakh shares @ Rs. 120 on December 20, 2005 (Rs. 3 crores)	Promoted by Manish Marwah and Himanshu Shah in March 2004 (First Directors of the company). Address as per KYC form is mentioned as UG-47, Ansal Chamber-II, Bhikaji Cama Place, New Delhi-110 066. Contact number as per KYC form is 26193042
2. Neol Equity Research Private Limited allotted One lakh shares @ Rs. 120 on January 4, 2006 (Rs. 1.2 cr)	Manish Marwah and Manoj Meher are the Directors of the company. Address as per KYC form is mentioned as UG-47, Ansal Chamber-II, Bhikaji Cama Place, New Delhi-110 066. Contact number as per KYC form with is 26193042.
3. Eden Realty Private Limited allotted 50000 shares @ Rs. 120 on January 4, 2006 (Rs. 60 lakhs)	Promoted by Manish Marwah and Himanshu Shah in March 2004 (First Directors of the company). Address as per KYC form is mentioned as UG-47, Ansal Chamber-II, Bhikaji Cama Place, New Delhi-110 066. Contact number as per KYC form is 26193042

The company had identified the above entities through Devam International, though the company denied any knowledge of the above entities being connected with Manish Marwah/Dilip Nabera group. However, it is seen that Sapphire Consulting Group, a sole proprietorship firm of Shri Manish Marwah had transferred an amount of Rs. 1.2 cr on 29/12/05 to the bank account of Atlanta Limited. Immediately, the said amount of Rs. 1.2 cr was transferred back to Sapphire Consulting group, only to be re-transmitted to the company for

subscribing pre-IPO allotment of shares in the name of Neol Equity Research Private Limited (Neol Equity) on 30/12/05 by routing the funds in the manner as described above.

4.3(b): At the IPO stage, the presence of the Manish Marwah/Dilip Nabera group was found through another group entity viz. Emerging Capital Advisors Ltd which had received 56,456 shares in IPO issue, the details of which are as given below:

IPO Allotee:

Allottees	Connection with Manish Marwah/Dilip Nabera
1. Emerging Capital Advisors Ltd	Promoted by Manish Marwah and Dilip Nabera and Himanshu Shah in February 2004 (First Directors of the company). Address as per KYC form is mentioned as 612, 6th Floor, Golden Chambers, Andheri (W), Mumbai. It also had office at B-5/198, Safdarjung Enclave, New Delhi. This address was also shared by Manish Marwah.

4.3(c): Upon the listing of shares for trading in the secondary market, it was found that following entities connected with Manish Marwah/Dilip Nabera group had made large market purchases in the scrip of Atlanta Limited, the details of which are as given below:-

Entity	Connection with Manish Marwah/Dilip Nabera and (Market purchases of shares of Atlanta Ltd during the period from 25/9/06 to 12/12/06)
1. Emerging Capital Advisors Ltd	Details of connection given at 4.3(b) above. During the above period, it had purchased 325000 shares at NSE and 195000 shares at BSE.
2. Samradha Finstock Private Limited	Address as per KYC form is mentioned as 703, Gaurav Villa, Mahavir Nagar, Kandivili (W), Mumbai. This address is the residential address of Dilip Nabera. During the above period, it had purchased 88000 shares at NSE and 73000 shares at BSE.

Entity	Connection with Manish Marwah/Dilip Nabera and (Market purchases of shares of Atlanta Ltd during the period from 25/9/06 to 12/12/06)
3. Mayrose Capfin Pvt Ltd	Address as per KYC form is mentioned as 703, Gaurav Villa, Mahvir Nagar, Kandivili (W), Mumbai . This address is the residential address of Dilip Nabera . During the above period, it had purchased 261591 shares at NSE and 151612 shares at BSE.
4. Adhunik Finance Private Limited	Directors are Dilip Nabera and Sadhana Nabera . Address as per KYC form as Gr 1/B, May Building, Princess Street, Mumbai . The said address is office address of Dilip Nabera . During the above period, it had purchased 25000 shares at BSE.
5. Sparkline Mercantile Co Pvt Ltd	Address as per KYC form is mentioned as 612, 6th Floor, Golden Chambers, Andheri (W), Mumbai . During the above period, it had purchased 21000 shares at BSE.

4.3(d): Post-IPO stage: A month after listing of its shares, it is noted that the company made announcements to the Stock Exchanges on 25/10/06 about the proposed issue of preferential issue of 27 lakhs warrants convertible into equity shares to the promoters and three “**strategic investors**” for raising funds for new real estate projects. The company allotted 18 lakhs warrants to two promoters and 9 lacs warrants to 3 entities which were also found to be part of Manish Marwah/Dilip Nabera group. The details of the said three entities (categorized as strategic investors) are as given below:

Post-IPO Warrants Allottees

Allottees	Connection with Manish Marwah/Dilip Nabera
Winstar Ecom Pvt. Ltd. was allotted 4 lacs warrants. Paid 10% of issue price of Rs. 317.50: Rs. 1.27 cr.	Address as per KYC form is mentioned as UG-47, Ansal Chamber-II, Bhikaji Cama Place, New Delhi-110 066 , which is same as Neol Equity . Contact number as per KYC form with DP UTI Securities is 26193042 , which is same as Neol Equity

Allottees	Connection with Manish Marwah/Dilip Nabera
<p>Spotlight Securities Pvt. Ltd was allotted 3 lacs warrants. Paid 10% of issue price of Rs. 317.50: Rs. 95.25 lakhs.</p>	<p>Address as per KYC form with DP UTI Securities is mentioned as UG-47, Ansal Chamber-II, Bhikaji Cama Place, New Delhi-110 066, which is same as Neol Equity.</p> <p>Contact number as per KYC form with DP UTI Securities is 26193042, which is same as Neol Equity.</p> <p>Spotlight Securities Pvt. Ltd had received its funds from Winstar E-com for subscription money for warrants.</p>
<p>Ellis Equity Advisors Pvt. Ltd was allotted 2 lacs warrants. Paid 10% of issue price of Rs. 317.50: Rs. 63.50 lakhs</p>	<p>Address as per KYC form with DP Alankit Assignments Ltd is mentioned as UG-47, Ansal Chamber-II, Bhikaji Cama Place, New Delhi-110 066, which is same as Neol Equity.</p> <p>Contact number as per KYC form with DP UTI Securities is 26193042, which is same as Neol Equity.</p> <p>Ellis Equity had received funds from Him Realty for subscription money for warrants.</p>

The company had categorized the above post-IPO warrant allottees as “Strategic Investors” in the announcement made to the Stock Exchange and EGM notice to the shareholders. Further, it is noted that there were no other investors apart from the above entities under this category. The company had stated that the above allottees were identified by Bondwell Corp Solutions Pvt Ltd. from the interaction of the company with various advisors. The company vide its letter dated September 21, 2007 stated that *“Mr Bondwell Corp Solutions Private Limited introduced Ellis Equity Advisor Private limited, Spotlight Securities Private Limited and Winstar E-com Private Limited, who were ready to bring in funds into the company by subscribing to the convertible warrants to be issued by the company at a price to be determined as per the SEBI Guidelines and within the time frame stipulated by us. Since we did not have any other investors who were ready to invest*

immediately, we decided to allot warrants to the said entities viz. Ellis Equity Advisor Private Limited, Spotlight Securities Private Limited and Winstar E-com Private Limited". However, as per the letter of Atlanta Ltd dated 31/1/2007 submitted to SEBI, this fact has not been recorded in the minutes of Board meeting of the company.

4.4 It is noted that in all the three stages as referred to in the reply of the company, there are distinct commonalities which cannot escape attention. The allottee entities are either promoted by Shri Manish Marwah (as first director) or have Manish Marwah as one of the directors or they share the same address viz. **UG-47, Ansal Chamber-II, Bhikaji Cama Place, New Delhi-110 066** and same phone numbers viz. **26193042**. It is also observed that one of the pre-IPO allottees viz. Him Realty Pvt Ltd had provided funds to post-IPO warrant allottee viz. Ellis Equity Advisors Pvt. Ltd. which was then used by Ellis Equity towards subscription of warrant issue. It is also pertinent to note that there were inter-se fund transfers among post-IPO warrants allottees viz. **Spotlight Securities Pvt. Ltd had received its funds from Winstar E-com Private Limited** which was used by Spotlight Securities for subscription of warrants. From the aforesaid, it is prima facie noted that all the allottees of pre-IPO issue and post-IPO warrants issue are linked with each other and inturn with the entities connected with Manish Marwah/Nabera Group.

4.5 It is further seen that during 25/9/06 to 29/12/06, the price of scrip had moved from Rs. 170/- on listing to Rs. 983/- on 29/12/06 and further went upto Rs.1141/- as on 10/01/2007. It was found that entities connected with Manish Marwah/Dilip Nabera group have made large purchases in the scrip of Atlanta Ltd as referred at Para No.4.3(c). As a result of large market transactions, the combined shareholding of the said connected entities rose from 3.72% as on 30/09/06 (606456 shares) to 6.52% as 30/11/06 (1063782 shares) of the total share capital of the company, which further increased to around 7.15% by 31/12/06 (1166713 shares). This shareholding includes the pre-IPO allotment of 400000 lacs, out of their total holding of 11.66 lacs shares as on 31/12/06. The shareholding of the said entities was set to increase further by 9 lacs to around 20 lacs upon conversion of warrants issued by

the company on December 8, 2006 to the three entities (strategic investors) connected with Manish Marwah/Dilip Nabera group. Consequently their holding in the company would have come to about 10% on an increased total capital of company (1.93 crore shares subsequent to the conversion of 27 lakhs warrants), but for the ad-interim Order. Prima facie, it is a substantial holding, by a connected group, despite the plea to the contrary that there were other shareholders as well.

4.6 It is noted that during the said period when the above entities were actively trading in the market, the company had made certain announcements related to business plans of the company. The company had made **nine announcements** to the stock exchanges on the various dates during the period from 25/9/2006 to 8/1/2007, out of which **five announcements** related to the news on the proposed joint venture with Thakural Constructions for undertaking **new real estate projects** and issue of 27 lakh convertible Warrants to finance the said projects. It is contended by the company that the funds raised by issue of warrants were not diverted and the same were utilized as per the purpose stated and disclosed to the Stock Exchanges and to the shareholders in the EGM. It is however, noted that out of Rs. 8.55 cr. raised by issuing warrants, Rs. 3.17 cr. were utilized for purchasing a plot at Goregaon-East which is **an old project** of the company. As per the prospectus, the said Goregoan project belongs to an old joint venture agreement made on May 5, 2006 in which 50% stake is held by Atlanta and 50% is held by Thakural Constructions. This is contrary to what was disclosed to the Stock Exchange and in the EGM notice to the shareholders stating that the funds raised by issue of warrants would be utilized for new real estate projects, which will be implemented by a new joint venture with Thakural Constructions, Mumbai in which 75% stake will be held by Atlanta and 25% will be of Thakural Constructions, Mumbai. Hence, there prima facie appears to be a mis-match between the stated announcements/purposes as disclosed and actual utilization of warrants funds by the company.

4.7 It is further noted that Business Standard (BS) in its edition 5/1/2007 carried certain news relating to the future business plans of Atlanta Ltd, which BS claimed to

have obtained during an interview with Shri Rajhoo Bbarot, Managing Director of the company. Shri Rajhoo Bbarot, Managing Director of the company had disclosed the price sensitive news to newspaper "Business Standard", however, the same was not notified to the Stock Exchanges. However, upon verification by the Stock Exchange, the company denied of having finalized the said plans on 08/01/07. In this regard, the company and Shri Rajhoo Bbarot admitted that business plans which were disclosed to the Business Standard were not notified to the exchanges since the Stock Exchange had advised the company to make declaration of only those events and plans which have been finalized by the company. As a matter of fact, the stock exchanges have advised the company way back on 26/10/06 not to disclose plans to them without an element of finality. On the contrary, Shri Rajhoo Bbarot, Managing Director had intentionally made media disclosure of price sensitive information relating to certain business plans/project which admittedly were not finalized, apparently with a view to influencing the market sentiments indirectly. Such premature announcements do mislead investors and affect the investor's sentiments and trading in the scrip.

4.8. It was further noted that on 9/1/2007 the company announced to the stock exchanges, a very high growth of 139% in Net sales and 1788% in Net profit in the financial results declared for the quarter ended December 2006 as compared to quarter ended December 2005. Preliminary analysis prima facie showed that Balaji Tollways-Nagpur Project with a contract value of Rs. 207.63 crore, which had commenced only on 25/9/2006, had contributed Rs. 59.71 crores to the quarterly income as on 31/12/06. The reporting of large revenue on account of Balaji Tollways-Nagpur Project which was in the initial stage of implementation raises suspicion about the accuracy and fairness of accounting policies and practices followed by the company. It is intriguing as to how a business just commenced can generate such a huge income in the first quarter itself. The justification provided by the company in the form of a certificate from an independent consultant appointed by NHAI seeking to suggest that 30% of the project has been completed turns on the logic that 30% completed work translates itself into 30% of the contract value of Rs.207.63 Crore with an equivalent income of Rs.59.71 Crores. In my view, the

same may be possible only with an accounting wizardry and not otherwise. However, the ongoing investigation should examine the same in detail.

4.9 The proceeds at 10% of the value of warrants which were collected on issue were Rs. 8.55 crore. Out of this, Rs. 3.17 crore was diverted for the old project at Goregaon (E) and not for the new realty projects as disclosed. Another chunk of Rs. 3.74 crore was paid to Shri Rajhoo Bbarot on 5/1/07 on account of the MOU the company had entered with Shri Rajhoo Bbarot on 15/9/06 with respect to the property of Shri Rajhoo Bbarot leased to the company. It appears that the said property has been leased to Atlanta Ltd and also been given as a collateral in respect of the loan raised from a consortium of banks of which SBI is the lead bank. The MOU provides that the company has the option to purchase the property or pay the interest free advance of Rs. 7.5 crore to Shri Rajhoo Bbarot and he shall create registered mortgage of the property in favour of lenders. In terms of the same, a payment of Rs. 3.74 crore is claimed to have been made by the company to Shri Rajhoo Bbarot out of the warrants proceeds. This again does not prima facie appear to be for the stated purpose as per the disclosures. With regard to utilization of IPO funds, it is noted that the company had furnished a copy of Certificate from Punjab National Bank, which is the monitoring agency for utilization of funds, indicating that the funds raised in the IPO have been used as per their stated purpose. However, the verification of this matter does not come under the purview of SEBI and is being referred to the Ministry of Corporate Affairs.

4.10 The main issue is the alleged link between the company and Manish Marwah/Dilip Nabera group. I note that the concatenation of events encompassing the pre-IPO allotment of shares to the entities connected to Manish Marwah/Dilip Nabera group to the post-IPO allotment of warrants to the other entities of Manish Marwah/Dilip Nabera group categorized as "Strategic investors", and the consolidation of shareholding through sustained purchases in the secondary market have to be viewed together and not in isolation. The fact remains that the price of the scrip after corporate announcements went up substantially and that the entities of Manish Marwah/Dilip Nabera group apparently played an active role. I note that

there were large market purchases by entities connected to Manish Marwah/ Dilip Nebara group in the secondary market immediately after listing of shares whereby they squeezed the floating stock, which is evident in the sharp rise of price of the scrip. It is significant to note that in all, 11 entities of this group have participated in relation to the share transactions in Atlanta group. But the significant feature is that different entities of the same group have participated at different stages, as described in the preceding paragraphs, perhaps with a view to burying the possible trail and to circumvent scrutiny. The underpinning factor in all these transactions at various stages is that Atlanta Ltd. and its promoters apparently knew them to be companies of the entities of Manish Marwah/Dilip Nabera group though it has been stoutly denied by Atlanta Limited. The pattern of consistently earmarking allotment of shares / warrants to the group is a material circumstance to reckon with. It is too much of a coincidence for the whole sequence to pass off as unrelated events. Also the plea that such entities of the said group were solely identified by Devam International and Bondwell Corp Solutions Pvt Ltd with no interaction whatsoever of the promoters, appears to be a contrived one to shore up their basic stand that such entities were not known to them.

4.11 Initially, when the private placement took place in December, 2005, it is seen that the proprietary concern of Manish Marwah viz. **Sapphire Consulting Group** had made a direct investment of Rs. 1.2 crore on December 29, 2005 which was reversed on the next day by introducing another entity viz. **Neol Equity Research Private Limited** in its place in which Manish Marwah happened to be one of the directors. This appears to be a clever ploy to keep the identity of Manish Marwah and his possible direct association with the company under the wraps. Also in the post-IPO warrants placement stage, the warrants were issued to entities connected with Manish Marwah/Dilip Nabera group and not to **any body else**. This is an act of discretion on the part of Atlanta Ltd which in turn signifies a predisposition towards the said group. Such a predisposition is a function of proximity and not a sequitor of any disconnect. The sequence of events highlighting the favored treatment to the said group, reportedly in the absence of any other investors, (as stated in the reply of the company dated 21/09/07) can be compatible only with circumstances

suggestive of meeting of the minds. Further, we are looking at commercial transaction which is dictated by commercial consideration and expediency sans any eleemosynary element. In such a context, the act of discretion is to be adjudged purely in a commercial sense in all its amplitude. Normally, synergy of sorts permeates the conduct of the persons acting in concert. The same may be evident from a demonstrable collective activity bringing together the synergies. In the instant case, the sequence of events with all the significations and overtones coupled with the conduct prima facie indicates the existence of circumstances for a synergy of sorts between Atlanta Ltd/its promoters and the Manish Marwah/Dilip Nabera group. It is such a subtly nuanced relationship that it can be unraveled only through a close appraisal of the brooding circumstances with all its unmistakable portents.

4.12 The Supreme Court decision cited by the entities no doubt stresses that inference from evidences and circumstances must be carefully distinguished from surmises and conjectures. Also the same decision lays down that an inference can be drawn when there are objective facts, direct or circumstantial, from which other facts sought to be established can be inferred. The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof can not be put in a straight jacket formula. The probative value could be gauged from facts and circumstances in a given case. The contention of the entities that there are no circumstances to link the entities of Manish Marwah/Dilip Nabera group with the company or its promoters and thereby fastening the liability on the company or on the promoters do not hold much water because the circumstances as delineated above do not ex facie permit of any other inference. The argument that the ad-interim Order seeking to espy a possible link between strands of unrelated events through a cerebral feat, reckons without the attendant circumstances providing necessary links, as explained in detail supra. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case. In a quasi judicial proceeding like this, that too in an interim

order based on appreciation of prima facie evidence the standard of proof is a prudent man's estimate only.

4.13 In this connection it is relevant to note Hon'ble Supreme Courts decision in Collector of Customs v/s D. Bhoormull (AIR 1974 SC 859), wherein it was held that:

“.....The prosecution or the department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and- as Prof. Brett felicitously puts it - “all exactness is a fake”. El Dorado of absolute proof being unattainable, the law, accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden”.

Further, it is also relevant to note the observation of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Ketan Parekh Vs SEBI, wherein it was held that:

“..... Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.....”

4.14 Atlanta and its promoters have also contended that Section 11(1), 11B and 11(4) of SEBI Act, 1992 do not empower the authority to issue restraint order as mentioned in the Ad-interim Order. Further, dispensation of pre-decisional hearing or denial of urgent post decisional hearing is against the well settled law. As per Section 11 (1), it is the duty of SEBI to protect the interests of investors in securities

and to promote and regulate the securities market by such measures as it thinks fit. The power to pass an ex-parte order is expressly derived from Section 11 (4) of the SEBI Act, which clearly empowers SEBI to pass ad-interim orders in urgent situations and grant a post decisional hearing thereafter. Further, the Hon'ble Bombay High Court in the matter of *Anand Rathi v. SEBI (2002) 110 Com Cas 837* held :

“the power which has been conferred by section 11B to issue directions are of widest possible amplitude and are exercisable in the interests of investors and in order to prevent inter alia a broker from conducting his business in a manner detrimental to the interests of investors or the securities market. The said power to issue directions under section 11B must carry with it by necessary implication, all powers and duties incidental and necessary to make the exercise of these powers fully effective including the powers to pass interim orders in aid of the final orders. The provision of section 11B it is to be noted has been introduced by an amendment brought about in 1995 and the same seeks to confer additional power on the board by way of interim measures, pending inquiry. The same is intended for the protection of the interests of the investors and the securities market”.

The Ad-interim order set out the detailed reasons for an urgent situation and dispensing with pre decisional hearing. Therefore, the contention of Atlanta and its promoters is devoid of merit.

5.0 Order:

5.1 In view of the foregoing, I am of the view that the directions in the Ad-interim order dated February 22, 2007 against Atlanta Ltd and aforesaid promoters need to be confirmed and accordingly, I hereby confirm the same excepting for the modifications directed hereinafter. Taking note of the pleadings that the company's expansion activities have already suffered almost for nearly seven months and the company needs funds for its ongoing projects and future projects and that the interim directions on the company come in the way of the same by blocking any alteration in capital structure, I hereby modify Para 4.3 of Ad-interim Order to enable

the company to go ahead with any restructuring of its capital. Further, the interim directions mentioned in Para 4.2 of the Ad-interim Order in so far as they relate to the promoters as listed at Sr. 1 to 6 of the Para 4.2 of the Ad-interim Order who are before me in the present proceedings, would continue except for credit of shares to their account (demat or physical). Accordingly, Para 4.5, 4.6 and 4.7 of the Ad-interim Order also stand modified to give effect to the above directions. The exchanges and depositories are directed to note and give effect to the same.

5.2 The above directions shall take effect immediately.

5.3 The aforesaid directions are without prejudice to any other action that may be initiated against the above entities.

Place: Mumbai

Date : 27/09/2007

**G ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**