BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 19 - 27/2012]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of

No	Name of the Noticees:	PAN No.
1	Mr. G.S Sridhar	ACAPG1706B
2	Mr. P.V Murali Krishna	AHNPP6355K
3	Mr. A. Rajendra Prasad	ABLPA2819H
4	Mr. R. Shankar	AAYPR0439A
5	Dwarkadhish Import & Export Pvt Ltd	Not Available.
6	Burlington Financial Services (P) Ltd	Not Available.
7	Ekveera Computers (P) Ltd.	AAACC7451L.
8	Hemdil Financial Services Ltd. (Name changed to M/s Camelot Advisory Services Ltd)	Not Available.
9	Prathakal Commercial & Agencies (P) Ltd.	Not Available.

In the matter of Datasoft Application Software (India) Limited.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in the matter of Datasoft Application Software (India) Limited (hereinafter referred to as **"DASIL/Company"**) for the period from 2000 - 2001. The scrip of DASIL was listed in Bombay Stock Exchange Ltd. (hereinafter referred to as **'BSE'**) and Ahmedabad Stock Exchange (hereinafter referred to as "**ASE**") at the relevant time.

2. It was observed that the Board of Directors of DASIL on January 28, 2000 made a preferential allotment of 1,20,00,000 shares for cash @ ₹.10/- per share with a premium of ₹.17/- per

share. The share capital of DASIL was 1,50,00,000 (after preferential allotment) out of which 30,00,000 shares were fully paid up at ₹. 10/- each. The rest i.e. 1,20,00,000 shares were partly paid up to the extent of 10% and thus, the total paid up capital of the company amounted to ₹.4,20,00,000/- . The capital structure of the company is given below;

Paid –up capital of the company as on 31.03.1999 -		₹. 3, 00, 00,000
First call @ ₹. 1 per share made on a preferential basis on April 27, 2000 -		₹. 1, 20, 00,000
	Total :	₹. 4, 20, 00,000

3. Investigation observed that the nine entities given in the table below together acquired 66,56,000 shares through preferential allotment of DASIL. The details of the preferential allotment, i.e. no. of shares allotted/acquired vis-a-vis share capital of DASIL i.e. 1,50,00,000, is given below:

Table - A

No.	**Name of the applicant**	**Date of allotment**	**No. of shares**	**% of post-issued capital**
1.	Burlington Financial Services (P) Ltd.	27-04-2000	7,45,000	4.96
2.	Dwarkadhish Import & Export (P) Ltd	27-04-2000	7,43,000	4.95
3.	R Shankar	27-04-2000	7,45,000	4.96
4.	GS Sridhar	27-04-2000	7,46,000	4.97
5.	PV Muralikrishna	27-04-2000	7,40,000	4.93
6.	A Rajendra Prasad	27-04-2000	7,00,000	4.66
7.	Hemdil Financial Services Ltd	27-04-2000	7,40,000	4.93
8.	Ekveera Computers (P) Ltd.	27-04-2000	7,48,500	4.99
9.	Prathakal Comm. & Ag. (P) Ltd.	27-04-2000	7,48,500	4.99
	TOTAL		**66,56,000**	**44.34 %**

4. The details of the preferential allotment, i.e. no. of shares allotted/acquired vis-a-vis paid up share capital of DASIL i.e. ₹.4,20,00,000, is produced below:

Table - B

No.	Name of the applicant	No. of shares	% of paid up share capital
1.	Burlington Financial Services (P) Ltd.	7,45,000	1.77
2.	Dwarkadhish Import & Export (P) Ltd	7,43,000	1.77
3.	R Shankar	7,45,000	1.77
4.	GS Sridhar	7,46,000	1.78
5.	PV Muralikrishna	7,40,000	1.76
6.	A Rajendra Prasad	7,00,000	1.67
7.	Hemdil Financial Services Ltd	7,40,000	1.76
8.	Ekveera Computers (P) Ltd.	7,48,500	1.78
9.	Prathakal Comm. & Ag. (P) Ltd.	7,48,500	1.78
	TOTAL	**66,56,000**	**15.85 %**

5. It was alleged that the above nine entities (hereinafter collectively referred to as the '**Noticees/Acquirers'**) are connected entities and acted in concert with one another and collectively acquired 66,56,000 shares (partly paid up ₹. 1/- each) worth ₹.66,56,000 which constitutes 15.85% of share capital of DASIL (₹.4,20,00,000) through preferential allotment. Since the acquirers acquired more than 5% shares of DASIL, they were required to disclose the aggregate of their shareholding or voting rights to the company/DASIL under Regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**"). It is alleged that no such disclosure was made by the acquirers.

6. It was further alleged that the acquisition of the aforesaid 66,56,000 shares (15.85%) was more than the threshold limit specified under regulation 10 of the SAST Regulations and therefore, the acquirers were required to make a public announcement in terms of Regulation 10 of the SAST Regulations. It is alleged that no such announcement was made by the acquirers.

7. Hence, in view of the above, it was alleged that acquirers through the above action violated Regulation 7(1) and Regulation 10 of the SAST Regulations, 1997. Consequently, the alleged violation make the acquirers liable for monetary penalty under sections 15A (b) and 15 H of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER

8. Mr. V.S. Sundaresan was appointed as Adjudicating Officer vide order dated March 27, 2008 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules'**) to inquire into and adjudge the aforesaid alleged violation of SAST Regulation committed by the Noticees.

9. Consequent upon the transfer of Mr. V. S. Sundaresan, I was appointed as the Adjudicating Officer vide order dated November 18, 2009 and December 08, 2009.

SHOW CAUSE NOTICE, HEARING, CROSS-EXAMINATION AND REPLY

10. Show Cause Notices (hereinafter referred to as **"SCN"**) dated February 25, 2009 were issued to the Noticees by Speed Post under rule 4 of the Rules to show cause as to why an inquiry should not be held against the Noticees and penalty be not imposed under section 15A (b) and 15 H of SEBI Act for the alleged violations specified in the said SCN.

11. It was alleged in the SCN that the acquirers/Noticees together acted in concert with one another and collectively acquired 66,56,000 shares constituting 15.85% of the share capital of DASIL through preferential allotment. Accordingly, the acquirers were required to make disclosure in terms of SAST Regulations which they allegedly failed to do so.

12. The status of the delivery of SCN and Hearing Notices are as under:

Table - C

No.	Name of the Noticees:	Delivery status for SCN:	Delivery status for Hearing Notice:
1.	Mr. GS Sridhar	SCN delivered.	Hearing Notice delivered.
2.	Mr. PV Murali Krishna	SCN delivered.	Hearing Notice delivered.
3.	Mr, Rajendra Prasad	SCN delivered.	Hearing Notice delivered.
4.	Mr. R. Shankar	SCN delivered.	Hearing Notice delivered.
5.	Dwarkadhish Import and Export P Ltd	SCN delivered.	Hearing Notice delivered.
6.	Hemdil Financial Services Ltd	SCN affixed.	Hearing Notice affixed.
7.	Prathakal Comm & Ag (P) Ltd	SCN affixed.	Hearing Notice affixed.
8.	Ekveera Computers (P) Ltd	SCN was advertised in Hindustan Times (Mumbai Edition) and Sakal (Mumbai Edition) on April 10, 2010. The SCN was also uploaded on the SEBI website.	Hearing Notice was advertised in Hindustan Times (Mumbai Edition) and Sakal (Mumbai Edition) on June 11, 2010. The Hearing Notice was also uploaded on the SEBI website.
9.	Burlington Financial Services (P) Ltd	SCN was advertised in Hindustan Times (Mumbai Edition) and Sakal (Mumbai Edition) on June 10, 2010. The SCN was also uploaded on the SEBI website.	Hearing Notice was advertised in Hindustan Times (Mumbai Edition) and Sakal (Mumbai Edition) on February 11, 2011. The Hearing Notice was also uploaded on the SEBI website.

13. The Noticees, viz. Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Imports and Export Pvt Ltd vide consent application no. 2100 applied for Consent Proceedings. The adjudication proceeding was thereby kept in abeyance.

14. SEBI vide communication dated April 20, 2011 informed the above Noticees that their consent application was rejected. In the interest of the natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Rules an opportunity of personal hearing was granted to the Noticees (Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd) vide hearing notice dated May 03, 2011. The Noticees sought 10 days adjournment to the personal hearing. Accordingly, another date for personal hearing was granted to the Noticees and they were advised to appear for the

personal hearing on June 14, 2011. The Noticees requested for the hearing date to be rescheduled to June 15, 2011 and the same was acceded.

15. Accordingly on June 15, 2011 Mr. Rajeev Kumar, Advocate appeared on behalf of the Noticees, viz. Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd and sought to make written submissions by June 21, 2011.

16. The Noticees Hemdil Financial Services Ltd, Ekveera Computers (P) Ltd, Prathakal Comm. & Ag. (P) Ltd and Burlington Financial Services (P) Ltd did not respond to the SCN dated February 25, 2009 and also did not appear for personal hearing hence the proceedings against them are decided ex-parte based on documents available before me.

17. The Noticees (Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd) made their submissions vide letter dated June 21, 2011. The relevant portions of their submission is summarized as below:

- *At the further outset, it is submitted that the notice is served after a very long delay of nine years. Neither the witnesses which are essential for deciding this matter nor the documents that are required to be produced will be available after such a long lapse of time. The matter pertains to the year 2000 and the SEBI has not taken any action till 2009. The noticees (Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish) shall be put to great prejudice in replying to the charges leveled against him. He cannot produce witnesses who are concerned in the matter nor can he produce the documents that may be essential for the defense.*
- *It is SEBI`s own case that the application for preferential allotment of shares by HFSL in DASIL was not signed by its director or any authorized signatory. It was fraudulently signed by Shri Mahesh Khandelwal impersonating as director/authorized signatory of HFSL. As such the allotment of shares by DASIL to HFSL is ab initio void being in violation of the provisions of section 68A of the Companies Act.1956. This fact makes the total alleged acquisition of shares of DASIL by the noticees (Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish) less than 15% of the capital of DASIL. Therefore, Regulation 10 of SAST Regulations would not apply in this case.*
- *All the statements of the noticees (Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish) have been recorded by someone who has not been appointed as Inquiring Authority in terms of Regulation 38 of SAST Regulations. It is also not clear under which provisions of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 the statements enclosed with the notice were recorded. These statements appear to have been recorded illegally and these are void. The AO was appointed only in 2008; it is not clear as to how these statements came to be recorded in the year 2003.*

- *It follows from the above that the names of persons whose oral testimony has been used should be furnished and he must be given an opportunity to cross examine the person to test the veracity of their statements. We would like to cross examine the under noted persons whose statements have been relied upon by SEBI.*

i. *Shri Anil D. Doshi, Director of Berlington Financial Services Ltd. (BFSL), said to be brother-in-law of Harshad Mehta.*
ii. *Shri G.S.Sridhar, Director of Newfin Financial Services Pvt. Ltd. (NFSPL).*
iii. *Shri Harshad Mehta, allegedly whose right hand man is Shri G.S. Sridhar and under whose directions the affairs of Vivanasri Financial Services Ltd. were carried out.*
iv. *Shri Mahesh Khandelwal, who is said to be an employee of Shri G.S. Sridhar and a Director in Dwarkadhish Import and Export Pvt. Ltd. (DIEPL).*
v. *Shri P.V. Muralikrishna, Director of Narven Finance and Investments LTD. (NFIL). He has alleged that the loan given to BIEPL was for investment in DASIL and it was squared up with some trading transactions around the end of 2001.*
vi. *Shri A. Rajendra Prasad, Director of NFIL, who has stated that the loan to DIEPL was squared up towards the end of 2001 and Shri Mahesh Khandelwal was not at all aware of any such squaring up of the account.*
vii. *Shri Ashok Sethi and Smt. Rama Sethi said to be Directors in Pratahkal Commercial and Agencies PVT. LTD. (PCAPL), who allegedly said that he was only rubber stamp and not a Director of PCPAL.*
viii. *Shri Hemendra Shah, Director of Shalibhadra Securities LTD. (SSL).*

- *The noticees (Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish) had applied for the preferential allotment of shares issued under Section 81(1A) of the Companies act. The Company, Datasoft Applications Software India Limited, (DASIL) had sent the Board resolution in respect of the proposed preferential allotment with full particulars, to the Stock Exchanges where it was listed. It is submitted that the regulations 10, 11 and 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (SAST Regulations for short) do not apply for acquisition of shares under preferential allotment as per Regulation 3 (1) (c) of the Regulations, 1997. The provision is reproduced hereunder:*

[(c) preferential allotment, made in pursuance of a resolution passed under Section 81 (1A) of the Companies Act, 1956 (1 of 1956)

Provided that,-

(i) Board Resolution in respect of the proposed preferential allotment is sent to all the stock exchanges on which the shares of the company are listed for being notified on the notice board;

(ii) full disclosures of the identity of the class of the proposed allottee(s) is made, and if any of the proposed allottee(s) is to be allotted such number of shares as would increase his holding to 5% or more of the post issued capital, then in such cases, the price at which the allotment is proposed, the identity of such person(s), the purpose of and reason for such allotment, consequential changes, if any, in the

board of directors of the company and in voting rights, the shareholding pattern of the company, and whether such allotment would result in change in control over the company are all disclosed in the notice of the General Meeting called for the purpose of consideration of the preferential allotment;]

<u>Omitted</u> vide SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002 dated 9th September, 2002

- *The Noticees (Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish) had applied for the shares of DASIL under the preferential allotment u/s 81(1A) of the Companies Act, 1956 under the bonafide belief that the provision of regulation 10 of the SAST, 1997 do not apply to such acquisition and that he was not acting in violation of any regulations there under. The provisions of regulation 10 of the SAST regulations do not apply to his acquisition of shares and voting rights. It is clear that there is no violation of provisions of regulation 10 of the SAST regulations. The company DASIL had completed all the requirements as mentioned in the Regulation 3 (1) (c) of the SAST Regulations, 1997 as it stood at the time of allotment of the preferential shares in question.*
- *Moreover, As per the SAST regulations;*

(e) "persons acting in concert" comprises, -

(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal),directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established:

(i) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to in sub-clause(i) of clause (2) and their associates;

(iv) …ix…..

Note: For the purposes of this clause `associate' means:

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and

(b) family trusts and Hindu Undivided Families.

- *Other submissions for your kind perusal and consideration are given hereunder:*

1. *The shares acquired under preferential allotment were not listed. The acquisition thereof did not affect the market in any manner.*
2. *His action did not result in any loss to any investor or to any group of investors as a result of the alleged default. It did not affect the interests of any investor.*
3. *We have not made any profit or gain from this transaction. Each of us had lost substantial amounts in this transaction, equivalent to the amount paid as application money, at the time of applying for shares under preferential allotment.*
4. *We are not involved in any other instance of allegation of such default till date.*
5. *We could not pay the call money within the time i.e. 31st August, 2000. His voting rights were restricted / extinguished in September, 2000, as per the Article 122 of the Articles of Association of Datasoft Application Software India Limited.*
6. *We did not have the requisite voting rights to trigger 'Open Offer'. Further the shares were forfeited by the Company in September, 2001, much before the enquiry into this alleged default had commenced.*
7. *The alleged violation of Regulation 7(1) did not continue for a long time. The voting rights were extinguished in September, 2000 and the shares were forfeited in September, 2001.*

18. The Noticees (Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd) vide reply dated June 21, 2011 further submitted as follows:

Summary of the submission made by Mr. GS Sridhar:

Burlington Financial Services P Ltd. (BFSL)

The statement given by Mr. Anil Doshi of Burlington Financial Services (P) Ltd (BFSL), with respect to his averments referred to in para 1 to 4 is completely false. Therefore, it is imperative that the noticee (Mr. GS Sridhar) should be given the opportunity to cross examine Shri Anil D. Doshi, the so called brother-in-law of Harshad Mehta. Shri Doshi had also alleged in his statement relied upon by SEBI that the notice was dealing in securities with Shri Harshad Mehta and all the decisions for buying and selling on behalf of Sridhar's Company used to be taken by Shri Harshad Mehta. It is further alleged that Shri Sridhar was the right hand man of Shri Harshad Mehta. It is also alleged by Shri Doshi that the funds for investments in preferential issue of DASIL were made available to BFSL by NFIL and upon allotment the delivery of the share was taken by NFIL. BFSL was nearly a name lender in the matter and the actual holder of the shares was G.S. Sridhar group of companies.

Regarding the funds allegedly arranged by NFIL to BFSL for subscription to DASIL preferential allotment, the noticee (Mr. GS Sridhar) had paid the amount to BFSL on account. The noticee (Mr. GS Sridhar) denies that he had arranged funds to BFSL for the purpose of investment into DASIL. The noticee(Mr. GS Sridhar) never discussed this issue of investment

in DASIL with BFSL. The noticee(Mr. GS Sridhar) had no knowledge that BFSL is investing into DASIL. The particular transaction is not the only transaction with BFSL. The noticee(Mr. GS Sridhar) had many transactions with BFSL before and after the alleged violation.

One instance of payment made in the usual course of business, cannot be isolated and an inference be drawn that the noticee (Mr. GS Sridhar) acted in concert with BFSL in acquisition of shares of DASIL.

Dwarkadhish Import & Export Pvt Ltd. (DIEPL)

The account with Dwarakadish Import & Export Pvt. Ltd (DIEPL) in the books of VFSL has already been submitted to SEBI. The noticee(Mr. GS Sridhar) had transactions with DIEPL pre and post the event of alleged violation. The noticee(Mr. GS Sridhar) had advanced the amount to DIEPL on account and the same was squared up eventually.

The utilization of the amount was not known and he did not know that DIEPL was investing into DASIL. The noticee (Mr. GS Sridhar) had neither informed DIEPL about the investment opportunity nor influenced DIEPL to invest in DASIL preferential allotment. The statement of Mahesh Khandelwal clearly shows that he knew about the investment opportunity from Mr. Shah of Shalibhadra Securities Ltd. The decision of DIEPL to invest in DASIL is their own. The noticee(Mr. GS Sridhar) did not have discussion with DIEPL about the investment in preferential allotment of shares of DASIL. The fact of DIEPL's investment in DASIL cannot be attributed to the noticee(Mr. GS Sridhar) in view of the statement of Shri Khandelwal before SEBI on oath.

One transaction out of many transactions with DIEPL cannot be isolated for drawing an inference that the noticee acted in concert with DIEPL for substantial acquisition of shares or voting rights of DASIL or for management control of DASIL.

HEMDIL Financial Services Ltd (HFSL)

The noticee (Mr. GS Sridhar) did not have any transaction whatsoever, with HFSL till December, 2000. The noticee(Mr. GS Sridhar) does not have relationship with HFSL of any sort. The noticee(Mr. GS Sridhar) did not know HFSL at the time of making investment into DASIL, i.e. during March & April, 2000. The noticee(Mr. GS Sridhar) did not know that HFSL was investing in the preferential offer of DASIL. The noticee (Mr. GS Sridhar) deny the allegation that they acted in concert with HFSL for the purpose of substantial acquisition of shares or voting rights of DASIL or gaining control over DASIL.

R. Shankar

Mr. R. Shankar was looking out for good investment opportunities. Mr. A. Rajendra Prasad had suggested investment in DASIL. On request, the noticee (Mr. GS Sridhar) provided loan to R. Shankar, which would be repaid by R. Shankar.

However, the noticee(Mr. GS Sridhar) did not come together to make substantial acquisition of shares or voting rights of DASIL or with a view to gain control over DASIL.

EKVEERA COMPUTERS PVT LTD (ECPL)

Mr. G.S. Sridhar and Mr. Rajendra Prasad resigned from the Company much before the transaction allegedly violating the SAST regulations took place. Before their exit from ECPL, it was not carrying on any business. No bank account was opened.

ECPL was acquired for carrying on computer related activities. The noticee (Mr. GS Sridhar) did not know the eventual acquirers of ECPL.

The noticee(Mr. GS Sridhar) did not have any transactions with ECPL till October, 2000. Later they were rendering computer related maintenance and supply services to the various companies. His association with ECPL is limited to that extent.
The noticee(Mr. GS Sridhar) was not aware of ECPL's transactions with respect to investment in DASIL. The decision of ECPL to invest in DASIL is their own.
The noticee (Mr. GS Sridhar) did not have discussion with ECPL about the investment towards preferential allotment of shares of DASIL. The fact of ECPL's investment in DASIL cannot be attributed to him. There is no basis for alleging that (Mr. GS Sridhar) acted in concert with ECPL for substantial acquisition of shares or voting rights of DASIL or for taking control on DASIL.

Prathakal Commercial Agencies Pvt Ltd. (PCAPL)

The noticee(Mr. GS Sridhar) did not have any transaction whatsoever, with PCAPL till December, 2000. The noticee (Mr. GS Sridhar) does not have relationship with PCAPL of any sort. The noticee(Mr. GS Sridhar) did not know PCAPL at the time of making investment into DASIL, i.e. during March & April, 2000. The noticee(Mr. GS Sridhar) did not know that PCAPL was investing in the preferential offer of DASIL. The noticee (Mr. GS Sridhar) did not know the directors and management of PCAPL.

Summary of the submission made by Mr. PV Murali Krishna:

Dwarkadhish Import & Export Pvt Ltd. (DIEPL)

The account with Dwarakadish Import & Export Pvt. Ltd (DIEPL) in the books of VFSL has already been submitted to SEBI. The noticee (Mr. PV Murali Krishna) had transactions with DIEPL pre and post the event of alleged violation. The noticee(Mr. PV Murali Krishna) had advanced the amount to DIEPL on account and the same was squared up eventually.
The utilization of the amount was not known to the noticee(Mr. PV Murali Krishna) and he did not know that DIEPL was investing into DASIL. The noticee(Mr. PV Murali Krishna) had neither informed DIEPL about the investment opportunity nor influenced DIEPL to invest in DASIL preferential allotment. The statement of Mahesh Khandelwal clearly shows that he knew about the investment opportunity from Mr. Shah of Shalibhadra Securities Ltd. The decision of DIEPL to invest in DASIL is their own. One transaction out of many transactions with DIEPL cannot be isolated for drawing an inference that the noticee(Mr. PV Murali Krishna) acted in concert with DIEPL for substantial acquisition of shares or voting rights of DASIL or for management control of DASIL.

HEMDIL Financial Services Ltd (HFSL)

The noticee(Mr. PV Murali Krishna) did not have any transaction whatsoever, with HFSL till December, 2000. The noticee(Mr. PV Murali Krishna) does not have relationship with HFSL of any sort. The noticee(Mr. PV Murali Krishna) did not know HFSL at the time of making investment into DASIL, i.e. during March & April, 2000.

EKVEERA COMPUTERS PVT LTD (ECPL)

The noticee(Mr. PV Murali Krishna) never had any relationship with the company nor did he carry out any transaction with it.

Prathakal Commercial Agencies Pvt Ltd. (PCAPL)

The noticee(Mr. PV Murali Krishna) did not have any transaction whatsoever, with PCAPL till December, 2000. The noticee(Mr. PV Murali Krishna) does not have relationship with

PCAPL of any sort. The noticee(Mr. PV Murali Krishna) did not know PCAPL at the time of making investment into DASIL, i.e. during March & April, 2000. The noticee(Mr. PV Murali Krishna) did not know that PCAPL was investing in the preferential offer of DASIL. The noticee(Mr. PV Murali Krishna) never asked Shri Hemendra Shah to give introduction to the Current Account of PCAPL.

Summary of the submission made by Mr. R Shankar:

Dwarkadhish Import & Export Pvt Ltd. (DIEPL)

The statement of Mahesh Khandelwal clearly shows that he knew about the investment opportunity from Mr. Shah of Shalibhadra Securities Ltd. The decision of DIEPL to invest in DASIL is their own. The noticee (Mr. R Shankar) did not have discussion with DIEPL about the investment in preferential allotment of shares of DASIL. The fact of DIEPL's investment in DASIL cannot be attributed to the noticee in view of the statement of Shri Khandelwal before SEBI on oath. The noticee(Mr. R Shankar) had not come together with DIEPL with any common objective or purpose of making substantial acquisition of shares or voting rights of DASIL or gaining control over DASIL.

The noticee (Mr. R Shankar) deny the allegation that they acted in concert with DIEPL for the purpose of substantial acquisition of shares or voting rights of DASIL or gaining control over DASIL.

HEMDIL Financial Services Ltd (HFSL)

The noticee (Mr. R Shankar) did not have any transaction whatsoever, with HFSL. The noticee(Mr. R Shankar) does not have relationship with HFSL of any sort. The noticee(Mr. R Shankar) did not know HFSL at the time of making investment into DASIL, i.e. during March & April, 2000.

EKVEERA COMPUTERS PVT LTD (ECPL)

The noticee (Mr. R Shankar) did not have any transactions with ECPL. The noticee(Mr. R Shankar) was not aware of ECPL's transactions with respect to investment in DASIL. The decision of ECPL to invest in DASIL is their own.

Prathakal Commercial Agencies Pvt Ltd. (PCAPL)

The noticee (Mr. R Shankar) did not have any transaction whatsoever, with PCAPL. The noticee does not have relationship with PCAPL of any sort. The noticee(Mr. R Shankar) did not know PCAPL at the time of making investment into DASIL, i.e. during March & April, 2000. The noticee(Mr. R Shankar) did not know that PCAPL was investing in the preferential offer of DASIL.

Summary of the submission made by Mr. Rajendra Prasad:

Burlington Financial Services Pvt Ltd. (BFSL)

The statement given by Mr. Anil Doshi of Burlington Financial Services (P) Ltd (BFSL), with respect to his averments referred to in para 1 to 4 is completely false. Therefore, it is imperative that the noticee (Mr. Rajendra Prasad) should be given the opportunity to cross examine Shri Anil D. Doshi, the so called brother-in-law of Harshad Mehta. Shri Doshi had also alleged in his statement relied upon by SEBI that the notice was dealing in securities with Shri Harshad Mehta and all the decisions for buying and selling on behalf of Sridhar's Company used to be taken by Shri Harshad Mehta. It is further alleged that Shri Sridhar was

the right hand man of Shri Harshad Mehta. It is also alleged by Shri Doshi that the funds for investments in preferential issue of DASIL were made available to BFSL by NFIL and upon allotment the delivery of the share was taken by NFIL. DFSL was nearly a name lender in the matter and the actual holder of the shares was G.S. Sridhar group of companies.
In view of the totally false and misleading statement given by Shri Doshi it is demanded that Shri Anil D. Doshi and Shri Harshad Mehta should be summoned and be allowed to be cross examined by the noticee (Mr. Rajendra Prasad).

Regarding the funds allegedly arranged by NFIL to BFSL for subscription to DASIL preferential allotment, the noticee(Mr. Rajendra Prasad) had paid the amount to BFSL on account. The noticee(Mr. Rajendra Prasad) denies that he had arranged funds to BFSL for the purpose of investment into DASIL. The noticee (Mr. Rajendra Prasad) never discussed this issue of investment in DASIL with BFSL. The noticee (Mr. Rajendra Prasad) had no knowledge that BFSL is investing into DASIL. The particular transaction is not the only transaction with BFSL. The noticee(Mr. Rajendra Prasad) had many transactions with BFSL before and after the alleged violation.
One instance of payment made in the usual course of business, cannot be isolated and an inference be drawn that the noticee (Mr. Rajendra Prasad) acted in concert with BFSL in acquisition of shares of DASIL.

Dwarkadhish Import & Export Pvt Ltd. (DIEPL)

The account with Dwarakadish Import & Export Pvt. Ltd (DIEPL) in the books of VFSL has already been submitted to SEBI. The noticee(Mr. Rajendra Prasad) had transactions with DIEPL pre and post the event of alleged violation. The noticee (Mr. Rajendra Prasad) had advanced the amount to DIEPL on account.
The utilization of the amount was not known to the noticee(Mr. Rajendra Prasad) and he did not know that DIEPL was investing into DASIL. The noticee (Mr. Rajendra Prasad) had neither informed DIEPL about the investment opportunity nor influenced DIEPL to invest in DASIL preferential allotment. The statement of Mahesh Khandelwal clearly shows that he knew about the investment opportunity from Mr. Shah of Shalibhadra Securities Ltd. The decision of DIEPL to invest in DASIL is their own. The fact of DIEPL's investment in DASIL cannot be attributed to the noticee in view of the statement of Shri Khandelwal before SEBI on oath.One transaction out of many transactions with DIEPL cannot be isolated for drawing an inference that the noticee (Mr. Rajendra Prasad) acted in concert with DIEPL for substantial acquisition of shares or voting rights of DASIL or for management control of DASIL. The noticee (Mr. Rajendra Prasad) deny the allegation that they acted in concert with DIEPL for the purpose of substantial acquisition of shares or voting rights of DASIL or gaining control over DASIL.

HEMDIL Financial Services Ltd (HFSL)

The noticee (Mr. Rajendra Prasad) did not have any transaction whatsoever, with HFSL till December, 2000. The noticee(Mr. Rajendra Prasad) does not have relationship with HFSL of any sort. The noticee (Mr. Rajendra Prasad) did not know HFSL at the time of making investment into DASIL, i.e. during March & April, 2000. The noticee(Mr. Rajendra Prasad) did not know that HFSL was investing in the preferential offer of DASIL.

R. Shankar

Mr. R. Shankar was looking out for good investment opportunities. The noticee(Mr. Rajendra Prasad) had suggested investment in DASIL. However, the noticee(Mr. Rajendra Prasad) did not come together to make substantial acquisition of shares or voting rights of DASIL or with a view to gain control over DASIL. The noticee (Mr. Rajendra Prasad) did not have any such objective or purpose.

The noticee (Mr. Rajendra Prasad) deny the allegation that he acted in concert with Mr. R. Shankar for the purpose of substantial acquisition of shares or voting rights of DASIL or gaining control over DASIL.

EKVEERA COMPUTERS PVT LTD (ECPL)

Mr. G.S. Sridhar and the noticee(Mr. Rajendra Prasad) resigned from the Company much before the transaction allegedly violating the SAST regulations took place. Before their exit from ECPL, it was not carrying on any business. No bank account was opened.

ECPL was acquired for carrying on computer related activities. The noticee(Mr. Rajendra Prasad) did not know the eventual acquirers of ECPL. The noticee did not have any transactions with ECPL till October, 2000. Later they were rendering computer related maintenance and supply services to the various companies in which he was a director. His association with ECPL is limited to that extent. The noticee(Mr. Rajendra Prasad) was not aware of ECPL's transactions with respect to investment in DASIL. The decision of ECPL to invest in DASIL is their own.

Prathakal Commercial Agencies Pvt Ltd. (PCAPL)

The noticee (Mr. Rajendra Prasad) did not have any transaction whatsoever, with PCAPL till December, 2000. The noticee (Mr. Rajendra Prasad) does not have relationship with PCAPL of any sort. The noticee(Mr. Rajendra Prasad) did not know PCAPL at the time of making investment into DASIL, i.e. during March & April, 2000. The noticee (Mr. Rajendra Prasad) did not know that PCAPL was investing in the preferential offer of DASIL. The noticee(Mr. Rajendra Prasad) did not know the directors and management of PCAPL.

Summary of the submissions made by Dwarkadhish Import and Export Pvt Ltd:

Burlington Financial Services Pvt Ltd. (BFSL)

The statement given by Mr. Anil Doshi of Burlington Financial Services (P) Ltd (BFSL), with respect to his averments referred to in para 1 to 4 is completely false. Therefore, it is imperative that the noticee(Dwarkadhish) should be given the opportunity to cross examine Shri Anil D. Doshi, the so called brother-in-law of Harshad Mehta. In view of the totally false and misleading statement given by Shri Doshi it is demanded that Shri Anil D. Doshi and Shri Harshad Mehta should be summoned and be allowed to be cross examined by the noticee(Dwarkadhish. The noticee (Dwarkadhish) had not come together with a common objective or purpose of making substantial acquisition of shares or voting rights of DASIL or gaining control over DASIL.

The noticee(Dwarkadhish) deny the allegation that the noticee acted in concert with DIEPL for the purpose of substantial acquisition of shares or voting rights of DASIL or gaining control over DASIL.

HEMDIL Financial Services Ltd (HFSL)

The noticee(Dwarkadhish) did not have any transaction whatsoever, with HFSL.. The noticee (Dwarkadhish) did not know HFSL at the time of making investment into DASIL, i.e. during March & April, 2000. There is no basis for alleging that the noticee (Dwarkadhish) acted in concert with HFSL for substantial acquisition of shares or voting rights of DASIL or for taking control on DASIL.

R. Shankar

The noticee(Dwarkadhish) denies the allegation that it acted in concert with Mr. R. Shankar for the purpose of substantial acquisition of shares or voting rights of DASIL or gaining control over DASIL. Noticee (Dwarkadhish) never had any dealings with Mr. Shankar.

EKVEERA COMPUTERS PVT LTD (ECPL)

The noticee(Dwarkadhish) did not have any transactions with ECPLThe noticee (Dwarkadhish) was not aware of ECPL's transactions with respect to investment in DASIL. The decision of ECPL to invest in DASIL is their own. The fact of ECPL's investment in DASIL cannot be attributed to him. There is no basis for alleging that the noticee (Dwarkadhish) acted in concert with ECPL for substantial acquisition of shares or voting rights of DASIL or for taking control on DASIL.

Prathakal Commercial Agencies Pvt Ltd. (PCAPL)

The noticee (Dwarkadhish) did not have any transaction whatsoever, with PCAPL.. The noticee (Dwarkadhish) did not know PCAPL at the time of making investment into DASIL, i.e. during March & April, 2000. The noticee (Dwarkadhish) did not know that PCAPL was investing in the preferential offer of DASIL. The noticee(Dwarkadhish) did not know the directors and management of PCAPL.

19. Hearing Notice dated July 01, 2011 was issued to Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd in reference to the cross-examination sought by them. The five Noticees vide email dated July 15, 2011 sought adjournment of the personal hearing. Accordingly another opportunity of personal hearing was granted to the Noticees on July 25, 2011. Mr. Rajeev Kumar, Advocate appeared on behalf of Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd for personal hearing on July 26, 2011 and stated interalia the following: "*Reg 3 (3) of SAST is applicable to the stock exchange for which the Noticee is not required to do anything. Regarding Regulation 3 (4) of SAST, it is submitted that the Noticee never acted in concert and the acquisition never exceeded 15% which is the threshold level for this purpose."* The above five Noticees further sought to make detailed submission by August 2, 2011. During the personal hearing it was informed to the above Noticees that cross examination shall be considered in respect of only those entities viz. Mr. Anil Doshi, Mr, Ashok Sethi, Mr. Mahesh Khandelwal, Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. R Shankar and Mr. Rajendra Prasad whose statements were relied by SEBI upon framing the charges in the SCN dated February 25, 2009.

20. The Noticees viz. Mr. Rajendra Prasad, Mr. Murali Krishna and Dwarkadhish Import and Export Pvt Ltd vide reply dated August 01, 2011 made a detailed submission, the relevant portion of which is as given below:

- *At the time of personal hearing held on July 26, 2011 before the Ld. Adjudicating Officer (the A.O. for short) one document purporting to be a Bank Statement for the period from 13-05-1999 to 13-12-2000 was handed over to the Advocate of the noticee. This document is neither signed nor does it bear any signature or seal of the Bank. This appears to be of a company named HENDIL Financial Ltd. The A.O. has raised a query about the transfer of money to Mr. Khandelwal as per the Bank Statement of M/s HEMDIL. It is submitted that:*
  a. *The document cannot be a Bank Statement as it does not bear any signature or seal of the Bank.*
  b. *It appears to be in the name of HENDIL Financial Services Ltd.*
  c. *There appears to be one entry dated 06-07-2000 for Rs. 13,000/- in favour of one Mr Mahesh Khandelwal*
  d. *It is not clear who is this Mahesh Khandelwal and for what purpose money has been transferred to him by HENDIL F.S.L. Only HENDIL can explain this.*
  e. *Hemdil is not at all concerned with the aforementioned document, which has no evidentiary value or sanctity, being an unsigned, unsealed and unstamped document. As such no comments can be offered.*
- *Also it may be noted that the entry is over 10 years old.*
- *Regarding non application of SAST Regulations, 1997 to the acquisition of shares, it is submitted that :*

a. *The Regulation 3(1) (c) was in the SAST Regulations in the year when the allotment of shares of DASIL was made to the noticee. It read as under:*

"1 Omitted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002. Prior to its omission, clause (c) read as under: —

(c) Preferential allotment, made in pursuance of a resolution passed under Section 81 (1A) of the Companies Act, 1956 (1 of 1956): Provided that,

(i) Board Resolution in respect of the proposed preferential allotment is sent to all the stock exchanges on which the shares of the company are listed for being notified on the notice board;

(ii) full disclosures of the identity of the class of the proposed allottee (s) is made, and if any of the proposed allottee (s) is to be allotted such number of shares as would increase his holding to 5% or more of the post issued capital, then in such cases, the price at which the allotment is proposed, the identity of such person(s), the purpose of and reason for such allotment, consequential changes, if any, in the board of directors of the company and in voting rights, the shareholding pattern of the company, and whether such allotment would result in change in control over the company are all disclosed in the notice of the General Meeting called for the purpose of consideration of the preferential allotment."

- *From the perusal of the above Regulation it is very clear that we were not required to take any action in the matter. The Regulation is applicable to the Stock Exchanges and/or the DASIL.*

- *The R 3(3) and 3(4), as they stood at the relevant time, are reproduced hereunder:*

"(3) In respect of acquisitions under clauses 3[***] (e), (h) and (i) of sub-regulation (1), the stock exchanges where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance of the date of the proposed acquisition, in case of acquisition exceeding 4[5] per cent of the voting share capital of the company.

(4) In respect of acquisitions under clauses (a), (b), 5[***] (e) and (i) of sub-regulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 1[15] per cent or more of the voting rights in a company.
2[Explanation.—……."
1 Substituted for "10%" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998, w.e.f. 28-10-1998. 3 The brackets and the word —(c) omitted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002.. 5 The brackets and the word —(c) omitted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002.

(a) *Regarding applicability of R.3 (3) of SAST Regulations, it is submitted that we were not required to take any action in the matter. It was to be done by the Company (DASIL).*
(b) *Regarding applicability of R.3 (4) of SAST Regulations, it is submitted that the threshold level mentioned for the purpose of the Regulations at the relevant time was 15 %.*
(c) *It may be seen that the Regulation 3(4) cannot be applied to those who had held only 1.77 % of voting rights / share capital in DASIL. We did not have any connection with other entities, namely Burlington Financial Services Pvt. Ltd., R. Shanker, HEMDIL Financial Services Ltd., EKVEERA Computer Pvt. LTD. and Pratahkal Comm. and Ag. Pvt. Ltd,, even as per the Show Cause Notice. Even if it be assumed for the sake of argument, that the entities had any knowledge of investment in DASIL by S/Shri G.S. Sridhar, P.V. Muralikrishna and A. Rajendra Prasad (which, in fact, he did not have), even then the combined shareholding / voting rights in DASIL did not reach the threshold level of 15 %. Therefore, there was no requirement to inform the SEBI about his acquisition of share / voting rights in DASIL.*

21. Vide SEBI letter dated November 22, 2011, the Noticees were granted an opportunity to cross-examine Mr. Ashok Sethi, Mr. Anil Doshi and Mr. Mahesh Khandelwal. It may be mentioned that Mr. Ashok Sethi recorded his statement before the IA (Investigating Authority) on behalf of Prathakal Comm & Agencies Pvt Ltd and Mr. Anil Doshi recorded his statement on behalf of Burlington Financial Services Ltd and Mahesh Khandelwal recorded his statement before IA on behalf of Dwarkadhish Import and Export Pvt Ltd. It was observed that they all recorded their statement in the capacity of Directors of the respective companies. Cross-examination of Mr. Mahesh Khandelwal was conducted by one of the Noticee Dwarkadhish Import and Export Pvt Ltd on December 16, 2011 whereas, Mr. Ashok Sethi and Mr. Anil Doshi sought adjournment of the cross-examination; hence the cross-examination was rescheduled to January 16, 2012 and January 17, 2012. The witnesses Mr. Ashok Sethi and Mr. Anil Doshi were thereby cross-examined by Mr. Rajeev Kumar, Advocate of the Noticees on January 16, 2012 and January 17, 2012 respectively. The relevant portion of the cross-examination conducted on December 16, 2011, January 16, 2012 and January 17, 2012 are as given below:

The following questions were asked by Mr. Rajeev Kumar on behalf of one of the Noticee, Dwarkadhish Import and Export Pvt Ltd to Mr. Mahesh Khandelwal and the replies recorded are as under:

1. *Please tell your educational qualifications?*

A. *I have done my B. Com from Malad NL College of Commerce.*

2. *Can you recollect what authority had recorded your statement.?*

A. *I only know the name of Mr Sanjeev Dutt. I do not know the designation of the person.*

3. *Do you know from which department he was?*

A*. Yes he was from SEBI.*

4. *After recording your statement did he give any copy of your statement under the seal of his office ?*

A*. No.*

.

5. *You have said in your statement that ₹ 20 lakh was given to you by way of loan without any interest by Narven Financial Investments Ltd (NFIL).*

A. *Yes.*

6. *Was this loan given to Mr Mahesh Khandelwal personally or to Dwarkadhish Import.and Export Pvt Ltd. (DIEPL).*

A. *The amount was given to DIEPL and not to myself.*

7. *In DataSoft Application Software India Ltd (DASIL) you applied for 743 000 equity shares, Please tell us the reason*

A I came across Mr Hemendra V Shah of Ms Shalibhadra Securities Ltd, he suggested me to apply for preferential shares of DASIL , wherein he also told me that at the rate where you are getting the shares is very low and the demand for the shares of DASIL is very high so you might be getting a smaller allotment of these shares wherein you can gain some profit .

8. *What was the market rate of DASIL at that time?*

A The market rate was much higher than the preferential price

9. *Did you receive any support or advice from any of the Noticees whose names are mentioned in the SCN.*

A*. No.*

10*. Do you remember in AOA of Dwarkadhish the provision for making application in preferential issues was there?*

A. *NO I cannot recollect it now.*

The following questions were asked by Mr Rajeev Kumar, on behalf of the Noticees viz: Mr. GS Sridhar, Mr. PV Murali Krishna and Dwarkadhish Import and Export Pvt Ltd to Mr. Ashok Sethi and the replies recorded are as under:

1. *Do you admit that this is your statement? You have made statement on 14.1.2004 and 22.1.2004 before the investigating Officer .*

A. *Yes Sir.*

2*. You have stated in your statement that you were appointed as director of Prathakal Comm & Ag (Pvt) Ltd (****PCAPL****) along with your wife without any written communication.*

A. *I along with my wife joined the board of PCAPL and the appointment letter which was supposed to be given was never given to me.*

3. *You never got any appointment letter as a Director of PCAPL yet you signed an application for subscription of 7,48,500 shares of DASIL made by PCAPL signing as the Director of PCAPL.*

A. *I've already answered this question in my written statement dated 22.1.2004. "The signature appears to be mine. The address is correct but it is not written in my handwriting. I do not know about the quantity of shares applied or the payment made as these columns were not filled in my presence or with my knowledge. "*

4. *Do you admit your signature on the application form for 7,48,500 shares of DASIL which you have signed for PCAPL as Director?*

A. *My answer is the same as I have stated above.*

5. *Did you sign the application form in your personal capacity?*

A. *My answer is the same as given in Q. 3.*

6. *Your answer does not clarify this point whether you signed individually or as the Director of PCAPL.*

A. *My answer is the same as given in Q. 3.*

7. *Are you aware that if you deliberately refuse to give an answer or give a false answer knowingly here you are liable to be prosecuted.*
A. *I am not giving any false answer.*
8. *You are knowingly concealing the fact whether you signed the application individually or as director of PCAPL.*
A. *It is not true.*

The following questions were asked by Mr Rajeev Kumar, on behalf of the Noticees viz. Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export P Ltd to Mr. Anil Doshi and the replies recorded are as under:

1. *Did you give a statement before SEBI on November 25, 2003?*
A. ***Yes.***

2. *Have you read the statement again and understood it?*
A. *Yes I have.*

3. *You have mentioned the name of Harshad Mehta and Harshad Bhai. Are they the same individual named Hardhad Shantilal Mehta who was involved in securities scam of 1991-1992?*
A *All the above named individual are one person.*
4. *Did you receive any appointment letter for becoming a director in Burlington Financial Services Ltd (BFSL)?*
A. *No.*

5. *Late Mr. Harshad Mehta along with 42 other entities were declared as notified persons by the Custodian appointed in terms of Sec. 3 of Special Court for (Trial of Offences relating to Transactions in Securities) Act, 1992 and amended in 1994 (TORT). Are you aware of this or not?*
A. *No.*

6. *Late Mr. Harshad Mehta was also banned for life by SEBI for doing any transactions in the securities market. Are you aware?*
A. *No.*

7. *You have said that the application form that was filed for subscriptions of the shares totaling 7,45,000 for DASIL was only signed by you and you are not aware of any other content except age and occupation.*
A. *Yes.*

8. *Was the money for application paid from the account of BFSL?*
A. *I am not aware.*

9. *Were you dealing with the money lying in the account of BFSL?*
A. *I only used to sign blank cheques, I am not aware of any other thing.*

22. The Noticees vide email dated January 16, 2012 and February 03, 2012 sought to drop cross-examination of entities namely, Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Mahesh Khandelwal and Mr. Rajendra Prasad.

23. Subsequent to the cross examination of the above 3 entities, the five Noticees viz. Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd vide reply dated February 19, 2012 made further submission in the matter of DASIL, the relevant portion of which is as given below:

This final reply is being submitted on behalf of M/s Dwarkadhish Import and Export Pvt. Ltd. (DIEPL), M/s G.S. Sridhar, Rajendra Prasad, R. Shankar and P.V.Muralikrishna (collectively known as 'the Noticees') in respect of the notice under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (the 1995 Rules for short) dated February 25, 2009 (the SCN for short) in respect of the captioned matter. It is respectfully submitted:

1. *Shri Anil D. Doshi, alleged to be a Director of Burlington Financial Services Ltd. (BFSL), was allowed to be cross examined by the Ld. Adjudicating Officer on January 17, 2012, on behalf of the noticees mentioned above. Shri Anil Doshi admitted that he was appointed as a Director of BFSL by Late Harshad Shantilal Mehta, a brother-in-law of Shri Doshi. Wife of Late Harshad Mehta, Smt. Jyoti Mehta is sister of Shri Doshi. No appointment letter or any document like resolutions of the Board of BFSL etc. was ever given to Shri Doshi. He was appointed as a Director of the company on the oral orders of Late Harshad Mehta.*
2. *It is also admitted by him that Late Harshad Shantilal Mehta is the same person who was involved in the Securities Scam of 1991-92. Shri Doshi admitted that he was merely signing the cheques and other documents without being aware of anything. Even in the application for 7,45,000 shares of DASIL he had only signed the application form without being aware of anything except his age and occupation.*
3. *From the cross examination and re-examination it comes out very clearly that the appointment of Shri Doshi as Director of BFSL was illegal, fraudulent and contrary to the provisions of the Companies Act, 1956. The application signed by him on behalf of BFSL of 7,45,000 shares of DASIL was illegal, fraudulent and ab initio void. The transaction is completely bogus and illegal. Such transaction is non est in the eyes of law.*
4. *Such illegal and fraudulent allotment of 7,45,000 shares of DASIL are non-existent in the eyes of law for the reasons stated above.*
5. *It may also be noted that Late Harshad Mehta was the real person behind BFSL as admitted by Shri Doshi. In view of the fact that Harshad Mehta was a* ***notified*** *entity and had been barred by SEBI for life from doing any securities transaction in the market, the act of application for and the allotment of 7,45,000 shares of DASIL were also illegal and void. These have been applied for and allotted in violation of the SEBI Act and the provisions of Special Court for (Trial of Offences Relating to Transactions in Securities) Act, 1992 (TORT) as amended in 1994.*

6. *Similarly, Shri Ashok Sethi, alleged to be a Director of Prathakal Comm & Ag. (Pvt.) Ltd. (PCAPL), was cross examined on behalf of the noticees mentioned above and the following facts came on the record:*

a. *He admitted that his wife and he were appointed Directors of PCPAL on oral instructions of someone without there being any written communication like resolution of the Board of Directors etc. They never received any appointment letter. He deliberately gave a false answer saying that the signature on the application form appeared to be his. He did not know about the quantity of shares applied for or the payments made there for as these columns were not filled in his presence or with his knowledge. He refused to answer if the application was signed by him on behalf of PCAPL as Director or in his individual capacity.*

b. *From the above, it is clear that his appointment as a Director of PCPAL was fraudulent, illegal and in violation of the provisions of the Companies Act and ab initio null and void. He is not a Director of the company in the eyes of law. As such, any application signed by him on behalf of PCPAL for 7,48,500 shares and allotment thereof is ab initio null and void.*

7. *In view of the legal position explained above, it shall be observed that the applications made by 1. BFSL, 2. PCPAL and 3. Hemdil Financial Services Ltd. are fraudulent and illegal and these are ab initio void. Therefore, the allotment of shares made by DASIL to them is also ab initio null and void. It shall be observed that once allotment of shares to these entities are taken out the alleged shares acquired by the remaining entities fall below 15 % which is the threshold limit for the Regulation 10 of SAST Regulations. As such, provisions of Regulation 10 have not been violated.*

8. *So far as other noticees are concerned SEBI has not provided any legal proof whatsoever to sustain the allegation that DIEPL, R Shankar, G S Sridhar, P V Muralikrishna and ECPL were acting in concert. The allegations of SEBI are based on mere conjectures and surmises, as is clear from the perusal of Annexure 2 of the SCN dated 25-02-2009. The following facts must be borne in mind:*

a. *It is alleged that Shri G S Sridhar is a close associate of Harshad Mehta and he was described as the right hand man of Mehta – these bland statements prove nothing and are totally irrelevant to the allegation.*

b. *Shri Sridhar is Director of NFSPL and Shri P V Muralikrishna is his employee. Shri Rajendra Prasad and Muralikrishna are also Directors in HPSPL, NFIL and BFSL. Moreover, Shri Muralikrishna has stated that Shri Sridhar is the auditor and advisor of the aforesaid three companies on the matters of Company Law and Taxation. Shri Sridhar also admitted that he had been advising these companies on all major transactions. These facts, even if taken to be true, do not prove the allegation of acting in concert by the noticees for acquiring more than 5 % of the shares of DASIL.*

c. *The allegation of SEBI that Shri Sridhar was a Director of ECPL and he enjoyed commanding status over and above the Directors of these Companies is without any evidence or basis. This is a mere conjecture and surmise on the part of the SEBI. Other Directors of these Companies were acting independently and they were free to accept or reject any advice given by Shri Sridhar. To say that the Directors of these Companies are no more than his followers or executers of his command, is a totally*

false allegation. There is neither any documentary nor any oral evidence to prove this allegation.

d. *Even if, decision to invest in DASIL was taken by Shri Sridhar, Rajendra Prasad and Muralikrishna, that only shows that they had discussed among themselves about the investment. This, ipso facto, does not lead to the conclusion that they were acting in concert. Muralikrishna and Rajendra Prasad have not confirmed that the decisions were taken by them jointly.*

e. *So far DIEPL is concerned, Shri Mahesh Khandelwal has categorically stated in his cross examination before the AO that decision to invest in DASIL was taken by him alone on the advice of a share broker and after observing the fact that the share prices of DASIL were at a much higher level than the price at which the shares were offered in the private placement. He had no connection whatsoever with any other noticee while making the decision to invest in DASIL. Similarly, various allegations are made about Shri R. Shankar, Rajendra Prasad and P V Muralikrisha. The conclusions drawn about their acting in concert with other noticees are merely conjectures and surmises of SEBI based on erroneous inferences, having no foundation on any admissible evidence.*

f. *It is also submitted that the alleged violations were done in the year 2001.The SEBI issued SCN in 2009 ie after a delay of 9 years. This inordinately long delay has caused great prejudice to the noticees who have been deprived of the evidence, to prove their innocence, destroyed due to efflux of time. The violations, if any, of the SAST Regulations are merely technical. In all fairness the noticees are not liable to any punishment whatsoever.*

24. The Noticees were given another opportunity of personal hearing vide hearing notice dated March 02, 2012 subsequent to the cross-examination conducted on December 16, 2011, January 16, 2012 and January 17, 2012. The Noticees sought adjournment of the personal hearing, hence another opportunity of personal hearing was granted on April 12, 2012 vide hearing notice dated April 02, 2012. Mr. Rajeev Kumar, Advocate appeared on behalf of the Noticees viz. Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd on April 12, 2012 and submitted that their submissions dated June 21, 2011, August 01, 2011 and February 19, 2012 shall be treated as the final submission to the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

25. I have carefully examined the SCN, submission of the Noticees and the documents available on record. I observe that the allegations against the Noticees are as follows:

a) The Noticees acted in concert with one another and together acquired 66,56,000 shares constituting 15.85% of the share capital of DASIL through preferential allotment.

b) As the Noticees acquired more than 5% shares of DASIL they were also required to make disclosure under Regulation 7(1) of SAST Regulation which allegedly they failed to do so.

c) The Noticees were required to make an announcement under Regulation 10 of SAST Regulations but allegedly failed to do so.

In view of the above it was alleged that the Noticees violated the provisions of 7(1) and 10 of the SAST Regulations.

26. Now the issues that arise for consideration in the present case are :

a. Whether the Noticees are Persons Acting In Concert (PACs)?
b. As PACs whether they acquired more than 5% and 15 % of the shares of DASIL and thus attracted the disclosure requirement under Regulation 7 (1) and Regulation 10 of the SAST Regulations?
c. If so whether the Noticees have violated regulations 7 (1) and Regulation 10 of the SAST Regulations?
d. Does the violation, if any, on the part of the Noticees attract monetary penalty under sections 15 A (b) and 15H of the SEBI Act?
e. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

27. Before moving forward, it will be appropriate to refer to the relevant provisions of SAST Regulations, which at the relevant time read as under:

Acquisition of 5 per cent and more shares or voting rights of a company.

7. *1[(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company, to the company.*

ACQUISITION OF SHARES OR VOTING RIGHTS IN AND ACQUISITION OF CONTROL OVER A LISTED COMPANY

Acquisition of fifteen per cent or more of the shares or voting rights of any company.

10. *No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.*

28. Upon careful perusal of the documents available on record, I find the following:-

a. It was observed that the Noticees were allotted shares through preferential allotment of DASIL in April 2000.

b. It was observed that the share capital of DASIL was 1,50,00,000 (after preferential allotment) out of which 30,00,000 shares were fully paid up. The rest i.e. 1,20,00,000 shares were partly paid up to the extent of 10% and thus, the total paid up capital of the company amounted to ₹.4,20,00,000/- .The details of the preferential allotment, i.e. no. of shares allotted/acquired to the nine entities vis-a-vis paid up capital of DASIL i.e. ₹.4,20,00,000 shares, is as given below.

Table - D

No.	**Noticees.**	**No. of shares allotted.**	**Total no. of shares allotted.**	**% of the paid up share capital.**
1.	Burlington Financial Services (P) Ltd.	7,45,000	66, 56,000 shares.	15.85 %
2.	Dwarkadhish Import & Export (P) Ltd	7,43,000		
3.	R Shankar	7,45,000		
4.	GS Sridhar	7,46,000		
5.	PV Muralikrishna	7,40,000		
6.	A Rajendra Prasad	7,00,000		
7.	Hemdil Financial Services Ltd	7,40,000		
8.	Ekveera Computers (P) Ltd.	7,48,500		
9.	Prathakal Comm. & Ag. (P) Ltd.	7,48,500		

c. Investigation observed that as per Article 111 of the Articles of Association of DASIL "*Subject to any rights or restrictions for the time being attached to any class or classes of shares on a show of hands, every member present in person or if a body corporate through a representative appointed under the provisions of section 187 of the Act and Article 113 hereof or by proxy shall have one vote and on a poll the voting right of such member whether present in person or by representative or by proxy shall be in proportion to his share of the paid up equity share capital of the company.*" Thus, as the percentage holding of the Noticees as acquirers works out to 15.85 %, it was observed that the shares allotted to them being equity shares were entitled to voting rights.

d. It is observed from the above table that a total of 66,56,000 shares of DASIL were allotted to nine entities/acquirers which constituted 15.85% of the total shareholding of DASIL. It is further observed that the above entities were known/connected to each other

and were linked to the core group consisting of Mr. Sridhar, Mr. Rajendra Prasad and Mr. Muralikrishna and their companies called Harsha Pranav Securities Pvt Ltd (HPSPL), Narvin Finance & Investments Ltd (NFIL), Newfin Financial Services Ltd (NFSPL) and Vivenasri Financial Services Ltd (VFSL).

e. The Noticees viz. Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Imports and Exports Pvt Ltd subsequent to the cross-examination in their letter dated February 19, 2012 have submitted that the appointment of Mr. Anil Doshi, Director of Burlington Financial Services Ltd and Mr. Ashok Sethi Director of Prathakal Comm & Ag. (P) Ltd was on oral instructions without there being any written communication and therefore their directorship in the Company was illegal and void ab initio. Hence they contended that the application signed by Mr. Doshi and Mr. Sethi on behalf of Burlington Financial Services Ltd and Prathakal Comm & Ag. (P) Ltd for 7,45,000 and 7,48,500 shares respectively of DASIL was illegal and cannot be considered. They also contended that the application by the Noticee Hemdil was void as it was not signed by any director or authorized signatory. Thus, the allotment was in violation of the Companies Act.

f. It is not disputed by the Noticees that the shares were indeed allotted to the above Noticees by the company. The Company DASIL had also allotted the shares without raising any issue in this regard. Now after allotment the Noticees have no locus standi disputing the allotment of the shares as the legality or otherwise of the allotment can only be questioned by the company which allotted the shares and not applicants that applied to the shares at the same time. Thus sanctity of allotment of shares by the company needs to be upheld and is thus considered non questionable by the Noticees.

g. I would now discuss on the link between the Noticees which can be construed through two factors; connection or relationship between the Noticees and the flow of funds. The documents showing the relationship/connection with each other as demonstrated below was provided to the Noticees as Annexures.

Connection/relationship among the Noticees:

Table- E

No.	Connection/relationship among the Noticees:	Commonality of directors:
1.	Mr. Sridhar and Mr. P.V. Muralikrishna were the directors of Newfin Financial Services Ltd (NFSPL).	➢ Mr. Sridhar and Mr. P.V. Muralikrishna are both allottees.
2.	Mr. Rajendra Prasad and Mr. P.V Muralikrishna were the directors of Harsha Pranav Securities Pvt Ltd (HPSPL) and Vivenasri Financial Services Ltd (VFSL).	➢ Mr. Rajendra Prasad and Mr. P.V Muralikrishna directors of HPSPL, VFSL and NFIL were the allottees
3.	Mr. Rajendra Prasad and Mr. P.V Muralikrishna were also the directors of Narvin Finance & Investments Ltd (NFIL)	
4.	Mr. GS Sridhar and Mr. Rajendra Prasad were the directors of Ekveera Computers (P) Ltd.	➢ The directors, Mr. GS Sridhar and Mr. Rajendra Prasad as well as the company Ekveera Computers (P) Ltd are among the allottees.
No.	**Connection/relationship among the Noticees:**	**Other issues:**
5.	Prathakal Comm. & Ag. (P) Ltd and Hemdil Financial Services Ltd had the same address as that of Vivenasri Financial Services Ltd (VFSL).	➢ Prathakal and Hemdil who are among the allottees had similar address to VFSL as 305, Konark Shram, 156 Tardeo Road, Mumbai – 34.
6.	Dwarkadhish Import and Export Pvt Ltd received loan from Vivenasri Financial Services Ltd (VFSL). Mr. Mahesh Khandelwal, director of Dwarkadhish Import and Export Pvt Ltd which is among the allottee was also an employee of Vivenasri Financial Services Ltd (VFSL).	➢ Mr. Rajendra Prasad and Mr. P.V Muralikrishna were the directors of VFSL.
7.	Delivery of shares on behalf of all the 9 Noticees was taken by one Mr. Tukaram.	➢ Mr. Tukaram was an employee of VFSL where Mr. Rajendra Prasad and Mr. P.V Muralikrishna were the directors.
8.	Mr. R. Shankar applied for the shares of DASIL on the advice of Mr. Rajendra Prasad.	➢ R. Shankar and Rajendra Prasad were both allottees.

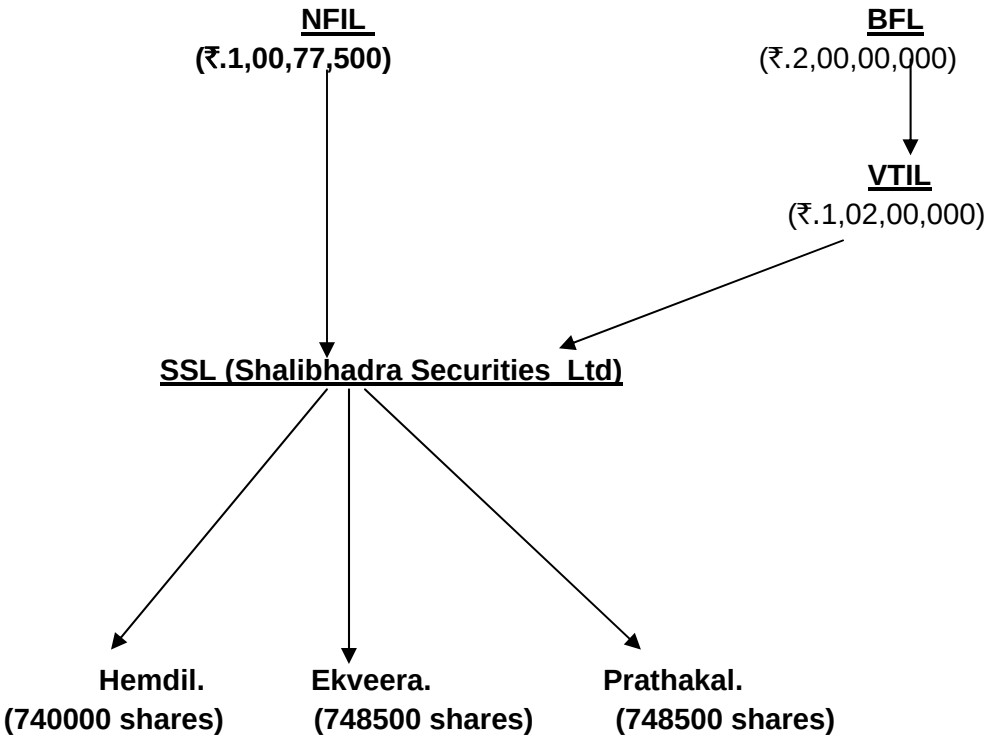
h. Given the fact as demonstrated above it can be concluded that the entities are related to each other. It is a statement of fact that entities share common directors and are thus related. While the relationship has been disputed by the Noticees, none of the Noticees that responded have produced before me any documents to allay to constitute a benefit of doubt to the entities on this count. Thus, I conclude that the above Noticees are connected to each other.

Flow of Funds:

a. Investigations have allegedly traced the ultimate source of fund utilized for making investments in the preferential issue of DASIL for the Noticees was made from NFIL, where Mr. Rajendra Prasad and Mr. Muralikrishna were the directors. It is observed that the flow of fund with regard to the Noticees have come from NFIL and M/s Burlington Finance Ltd., (**BFL**) a Kolkata based entity. From the statement of Mr. Sridhar dated November 20, 2003 to the IA, it is observed that Mr. Sridhar was acquainted with the director of BFL, Mr. Hanuman Mal and when asked about the source of investment, Mr. Sridhar stated that "*Investments were made out of own funds and certain borrowed funds (10 crores) from M/s Burlington Finance Ltd, Kolkata."* Mr. Sridhar further added that the above funds were given to him without any security. Mr. Rajendra Prasad has further stated in his statement dated December 05, 2003 to the IA that NFIL received unsecured ICD of ₹. 10 crore on April 22, 2000 from BFL.

b. It is observed that the share application money for 22,37,000 shares amounting to ₹ 60,53,400 of Prathakal Comm. & Ag. (P) Ltd, Hemdil Financial Services Ltd and Ekveera Computers (P) Ltd, who are among the Noticees, was paid through cheques bearing Nos. 031953, 031958 and 013950 issued from the account of a broker namely M/s Shalibhadra Securities Ltd (**SSL**) maintained with the Central Bank of India, Mumbai. Mr. Rajendra Prasad stated that the money was given to SSL on account as the money was due to SSL. However, this claim of Mr. Rajendra Prasad could not be substantiated during the investigation. From the information obtained from the Central Bank of India, it was observed that the above 3 cheques were issued against credit/ deposit of two cheques amounting to ₹ 2,02,77,500/- (₹.1,00,77,500/- + ₹.1,02,00,000) in the said account. It is observed that the cheque for ₹.1,00,77,500 was issued from NFIL where Mr. Rajendra Prasad and Mr. Muralikrishna were the directors and the other cheque for ₹.1,02,00,000 was issued from the account of M/s Vision Technologies (I) Ltd.(VTIL) and further enquiries with VTIL revealed that the said cheque of ₹. 1,02,00,000 was issued by them out of deposit of ₹.2,00,00,000/- received from BFL. As observed from the connection/relationship among the Noticees viz. Prathakal Comm. & Ag. (P) Ltd, Hemdil Financial Services Ltd and Ekveera Computers (P) Ltd were in some way directly or indirectly connected/known to the directors of NFIL namely Mr. Rajendra Prasad and Mr. PV Murali Krishna, hence it is observed from the flow of fund that the share application money came to the entities primarily from NFIL.

c. The flow of funds to the Noticees i.e, Hemdil, Ekveera and Prathakal from the above paragraph can be understood as under:



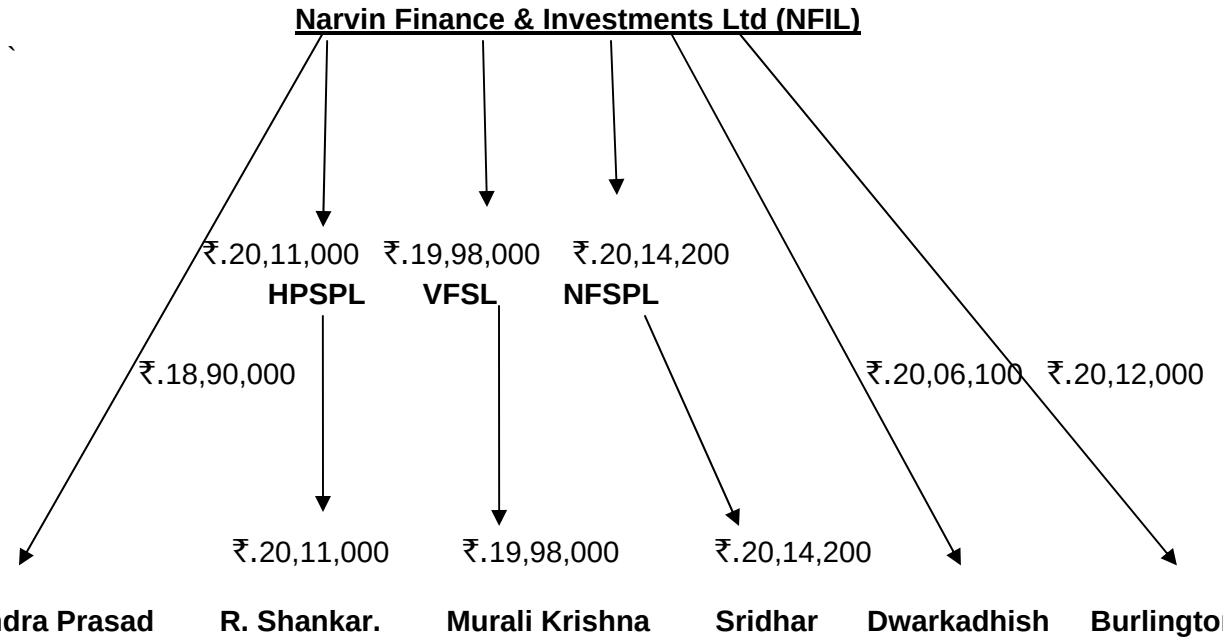
d. Hence, the Noticees, Prathakal Comm. & Ag. (P) Ltd, Hemdil Financial Services Ltd and Ekveera Computers (P) Ltd made share application for 22,37,000 shares of DASIL amounting to ₹ 60,53,400 which was mainly transferred from NFIL. As already stated above Mr. Rajendra Prasad and Mr. PV Murali Krishna were the Directors of NFIL.

e. With regard to the flow of fund for the Noticees namely, Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R Shankar, Burlington Financial Services Ltd and Dwarkadhish Import and Export Pvt Ltd, it is observed that 4419000 shares amounting to ₹.1,19,31,800/- were received from various accounts maintained with the Bank of Punjab and HDFC bank Mumbai. Details sought from the Bank of Punjab, Fort Branch showed that the share application money had flowed from the following bank accounts:

Table-F

Cheque No/dtd.	A/C No.	Account-holder	Shares applied in name of	No. of Shares	Amount (₹.)
367410 dated 24-04-2000	CA4002467	Narven Finance & Investments Ltd. (NFIL) Directors: Mr. Rajendra Prasad and Mr. P.V Muralikrishna	Rajendra Prasad	7,00,000	18,90,000
407340/341 dated 22-04-2000 and 24-04-2000	CA4002602	Harsha Pranav Securities P. Ltd.(HPSPL) Directors: Mr. Rajendra Prasad and Mr. P.V Muralikrishna	R. Shankar	7,45,000	20,11,500
412903 dated 24-04-2000	CA4002688	Dwarkadhish Import & Export P. Ltd. (DIEPL) Directors: Mr. Mahesh Khandelwal.	DIEPL	7,43,000	20,06,100
422789 dated 24-04-2000	CA4002481	Vivenasri Financial Services Ltd. (VFSL) Directors: Mr. Rajendra Prasad and Mr. P.V Muralikrishna	PV Murali Krishna	7,40,000	19,98,000
424356 dated 24-04-2000	CA4002466	Newfin Financial Services P. Ltd. (NFSPL) Directors: Mr. GS Sridhar and Mr. P.V Muralikrishna	G S Sridhar	7,46,000	20,14,200
0329407 dated NA.	12050000341	Burlington Financial Services Ltd. Director: Mr. Anil Doshi.	Burlington	7,45,000	20,12,000
			TOTAL	**44,19,000**	**₹. 1,19,31,800**

f. It was observed from the bank account statement of NFIL maintained with Bank of Punjab that the said investment of 4419000 shares amounting to ₹.1,19,31,800/- was made by the acquirers out of funds made available by NFIL which is as given below:



g. The amount received from NFIL was utilized by the above six Noticees towards the application money for the shares of DASIL as has been demonstrated in the Table- F above.

h. Thus, it is clear that for the total investment of ₹. 1,79,91,200/- in 66,56,000 shares the funds have primarily flowed from NFIL.

i. With regard to the source of payment made for the applications in the shares of DASIL the Noticees viz. Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Imports and Export Pvt Ltd submitted as follows:

- The Noticee, namely, Mr. GS Sridhar submitted that investment was made out of funds borrowed from Burlington Finance Ltd, a Kolkata based entity and the loan was borrowed without any security, which has not been repaid.
- The Noticee, Mr. PV Murali Krishna has submitted in his statement that the money for application of shares of DASIL was received from Vivenasri Finance Services Ltd (VFSL), of which he was a Director.

- The Noticee, Dwarkadhish Import and Export Pvt Ltd submitted that the amount for application of shares of DASIL was received from NFIL on a friendly basis, as the Director of NFIL Mr. PV Murali Krishna was known to the Director of the Noticee, Mr. Mahesh Khandelwal.
- The Noticee, Mr. Rajendra Prasad submitted that the fund for application in the shares of DASIL came from NFIL.
- The Noticee, Mr. R.Shankar submitted that the fund for application in the shares of DASIL came from Harsha Pranav Securities Pvt Ltd (HPSPL) on friendly basis where Mr. Rajendra Prasad and Mr. P.V Muralikrishna were the directors.

j. I observe from the submission of the above Noticees that the source of funds for the preferential allotment in DASIL was mainly on the basis of loan taken by them. However, they have not been able to produce any document in support of their claim, further it is a matter of fact that there was no security against the loan as claimed and the amount also was not repaid. Thus it can be concluded that the funds taken in above manner by the Noticees was not infact in the nature of a loan but was taken as "accommodation" for applying in the preferential shares of DASIL.

29. Apart from the observations with regard to common directors and the flow of funds as explained above, it is further observed that DASIL had entered into agreement with Ekveera Computers (P) Ltd on 28/4/2000 whereby DASIL agreed to purchase the proprietary rights to use the "novel and unique" concept of imparting mobile computer training in a bus said to have been developed by Ekveera Computers (P) Ltd. The consideration for purchase of such rights was a total refundable deposit amount of ₹.1.5 crores (non-interest bearing) to be placed with Ekveera Computers (P) Ltd for a period of three years commencing from July 1, 2001. It was observed that DASIL made the above payment of ₹.1 crore to Hemdil Financial Services Ltd. When Mr. Rajesh Bhuta director of DASIL was asked as to why the cheque was issued to Hemdil Financial Services Ltd rather than Ekveera Computers (P) Ltd, he replied that this had been done under the instruction of Ekveera Computers (P) Ltd. Hence Ekveera and Hemdil was found related. It is further observed that when Mr. Rajendra Prasad was questioned as to whether they acted in concert with others for acquiring more than 5% stake in DASIL, he admitted in reply to the question on December 05, 2003 to the IA that "*Myself, Muralikrishna and G. S. Sridhar have acted in concert*." Further Mr. GS Sridhar also submitted in his statement before IA that the proposal for the allotment in DASIL were worked out jointly by three of the Noticees namely, himself, Mr. Rajendra Prasad and Mr. PV Murali Krishna.

30. Now the issue for consideration in the matter is whether the Noticees acted in concert with each other for the acquisition of shares of DASIL in violation of the provisions of SAST Regulations. In this regard, it is pertinent to note the following definitions which are defined in the SAST Regulations:

Regulation 2(1) (b*), "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer.*

Regulation 2 (e) *"persons acting in concert comprise:*

1. *persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company,*
2. *without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established:*
   - *(i) a company, its holding company, or subsidiary or such company or company under the same management either individually or together with each other;*
   - *(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;*
   - *(iii) directors of companies referred to in sub-clause (i) of clause (2) and their associates……".*

31. The Honorable Securities Appellate Tribunal in Appeal No 12 of 2001 Naagraj Ganeshmal Jain Vs. P. Sri. Sai. Ram, Adjudication officer, observed that a person becomes an acquirer by virtue of his action 'who acquires or agrees to acquire shares etc'. The identification is thus action related. Further, the above definition of acquirer read along with the definition of persons acting in concert implies that the commonality of objective between the acquirer and the persons acting in concert mandate that their actions should not be viewed in isolation. Hence in cases where shares have been acquired pursuant to a common objective, the aggregated shares holding of the acquirers and the persons acting in concert have to take into account to determine contravention of the threshold limit prescribed in the regulations.

32. For the argument put forth by the Noticees namely Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd while all have initially refuted the charge of relationship and acting in concert, they have been unable to create any doubts in my mind in the matter by producing requisite documents to support their claim. Thus the submission made by the Noticees are not acceptable

33. I observe the following, based on the guidance provided in The Honorable Securities Appellate Tribunal in Appeal No 12 of 2001 Naagraj Ganeshmal Jain Vs. P. Sri. Sai. Ram:
    - It is statement of fact that relationships exists wr.t. Directors and other particulars.

- It is a fact that 66,56,000 shares constituting 15.85% of the share capital of the company was acquired through funds primarily received from NFIL, the common objective or purpose of substantial acquisition, pursuant to an understanding was served as demonstrated by the action of acquiring the shares of the company at the same time.
- It is fact that the delivery of shares on behalf of all 9 Noticees was taken by one Mr. Tukaram, who was an employee of VFSL where the Noticees, Mr. Rajendra Prasad and Mr. P.V Muralikrishna were the directors.

34. Further the Noticee Mr. Rajendra Prasad submitted before the IA that he alongwith Mr. PV Murali Krishna and Mr. GS Sridhar acted in concert and the same was also submitted by Mr. GS Sridhar in his statement. It was also mentioned by Mr. R Shankar that he had invested in the scrip on the advice of Mr. Rajendra Prasad. As mentioned elsewhere above though opportunity of cross examination was given to the Noticees, Mr. GS Sridhar, Mr. PV Murali Krishna, Mr. Rajendra Prasad, Mr. R. Shankar and Dwarkadhish Import and Export Pvt Ltd, the Noticees preferred to withdraw the opportunity of cross-examination without quoting any reason, especially when they had vehemently insisted on the same at that point of time. Hence, from this it can be concluded that these Noticees admittedly acted in concert for acquiring shares in DASIL.

35. In light of the above facts, commonality of objective on the part of the Noticees is evident in the actions that speak for itself i.e. acquisition of shares. Hence as it is seen that common intention to acquire the said shares by the Noticees is established from the facts and circumstances of the case enumerated above, it is concluded that the Noticees acted in concert with each other and had acquired the shares of the company on the dates mentioned above. In view of the same, the aggregated shareholdings of the Noticees have to be taken into account to find out any breach of the threshold limit prescribed under the SAST Regulations.

36. The next issue for consideration is whether the Noticees failed on its part to comply with the provisions of Regulation 7 (1) and 10 of the SAST Regulation. The Noticee's vide their submission dated June 21, 2011 argued that the preferential allotment of shares of DASIL was made pursuant of a resolution passed under section 81 (1A) of the Companies Act. Therefore, the Noticee's acquisition is covered under regulation 3 (1) (c) enjoying exemption from the purview of Regulation 10 of SAST Regulation. The Noticees have further stated that they had applied for the shares of DASIL under the preferential allotment u/s 81 (1A) as they were under the bonafide belief that the provision of Regulation 10 of SAST do not apply to such acquisition and they were not acting in any violation of regulation there under. The Noticees in their submission have also stated that they had individually applied for shares in DASIL and thus have not acquired shares or voting rights entitling them to have more than 5 % of the shares or voting rights. They therefore have not violated Regulation 7 (1) of the SAST Regulation.

37. I have carefully considered the submission of the Noticees. Regulation 3 (1) (c) of SAST provides exemption to acquisition pursuant to preferential allotment made in terms of section 81 (1A) of the Companies Act. But the exemption is not automatic. It is subject to fulfillment of the conditions provided (at the relevant time) in clauses (4) and (5) of Regulation 3 of SAST Regulation, 1997 which is as provided below:

(4) *In respect of acquisitions under clauses (a), (b), (c), (e) and (i) of sub-regulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 15 per cent or more of the voting rights in a company.*

(5) *The acquirer shall, along with the report referred to under sub-regulation (4), pay a fee of [ten thousand rupees] to the Board, either by a banker's cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.*

38. It has already been established that the Noticees had acted in concert to acquire the shares of DASIL. It is observed that the paid up capital of DASIL was ₹.4,20,00,000, shares. I find that there is no dispute regarding the number of shares acquired by the Noticees and that the acquisition crossed the threshold limit prescribed by Regulation 10 of SAST. Hence the Noticees as acquirers were required to file report under clause (4) and (5) of Regulation 3 of SAST.

39. Since the Noticees failed to fulfill the requirement of the pre-condition in clause (4) and (5) of Regulation 3 of SAST they were not entitled to avail the benefit of the exemption. As the Noticees together acquired 15.85 % share capital of DASIL thus crossing the threshold limit under Regulation 10 the Noticees/Acquirers were required to make public announcement under section 10 of the SAST Regulation which they have failed to do so. Hence I am convinced that the Noticees have violated the provisions of Regulation 10 of SAST Regulations.

40. It is not in dispute that the Noticees did not make any public announcement of offer in compliance with the regulation 10 of SAST Regulations in respect of the acquisitions referred to above. It has been held by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in the case of *Arya Holdings Limited V/s. P Sri Sai Ram, Adjudicating Officer*, -- Appeals No.3-5 of 2001 – Order dated May 04, 2001 – that *"……., the acquirer is required to comply with the requirement of making a public offer in terms of regulation 10, and failure to do so would attract the provisions of section 15H(ii).*

41. As stated above the Noticees acquired shares which accounted for 15.85% of the share capital of DASIL and were thus holding more than 5% of the paid up capital of the company. The Noticees who have acted in concert thus attracted the provisions of Regulation 7(1) of SAST and was required to make disclosure to DASIL, within 4 working days as required under Regulation 7 (2) of SAST (before amendment in 2002). Further no exemptions are provided in the Regulation from the disclosure to be made under 7(1) of SAST. It was informed by DASIL during investigation that it did not receive any intimation during the period from April 2000 till March 2001 from the Noticees. Noticees have also admitted in their reply that they have not made any disclosure under SAST Regulation. The Noticees have thus failed to make the required disclosure under 7 (1) of SAST Regulation.

42. The object of the SAST Regulation mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. In this regard I would like to rely upon the findings of Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd Vs. SEBI (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market".* In terms of regulation 7(1) of SAST disclosure is required to be made to the company and as per Regulation 10 of SAST the notices alongwith the acquirers were required to make public announcement to acquire 15% of the paid up capital of DASIL. Failure to make disclosure within the stipulated time period or public offer provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. Any deviation or evasion of the regulatory provisions issued by the regulator in the interests of the investors or non-adherance to the same for any reasons whatsoever, is bound to affect the interests of such investors. After taking all the above facts into consideration, it is established that the Noticees has violated the alleged provisions of Regulation 7 (1) and 10 of SAST Regulations.

43. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.".*

44. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15 A(b) and 15 H of the SEBI Act, which (at the relevant time) read as under:

Penalty for failure to furnish information, return, etc.

15A*. If any person, who is required under this Act or any rules or regulations made there under,-*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to [a penalty not exceeding five thousand rupees for everyday during which such failure continues;]

Penalty for non-disclosure of acquisition of shares and takeovers

15H. *If any person, who is required under this Act or any rules or regulations made thereunder, fails to, -*

(i) ------

(ii) make a public announcement to acquire shares at a minimum price;

he shall be liable to a penalty [of not exceeding five lakh rupees.]

45. While determining the quantum of monetary penalty under section 15A (b) and 15H, I have considered the factors stipulated in section 15J of SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

46. Upon perusal of the provisions of Section 15J, it is clear that the adjudicating officer is required to have due regard to the factors stated in the section. The same is a direction and not an option, which is however to be exercised with due regard to her discretion. This discretion is to be exercised judiciously, depending upon the facts and circumstances of each case as well as after analyzing of all the relevant material available on record especially in the case of failure to perform statutory obligations.

47. Any deviation or evasion of the regulatory provisions issued by the regulator in the interests of the investors or non adherence to the same for any reasons whatsoever, is bound to affect the interests of such investors. Although such a loss cannot be specifically computed in monetary terms, the fact remains that all regulatory provisions have a specific purpose behind

their enactment. The very purpose of enacting any legislation is due adherence to the procedures laid down there under to ensure the sound and smooth functioning of the capital market. If no cognizance were to be taken of any breach of these provisions and no liability fixed there upon, the entire purpose of incorporating the provisions in the said enactments would become redundant.

48. On perusal of the various provisions of the SAST Regulations, it is observed that the open offer process includes appointment of a SEBI registered merchant banker as manager to the offer, determination of offer size and price, opening of an escrow account, making public announcement in newspapers, filing of offer document with SEBI, dispatch of offer document to the eligible share holders, etc. By not having complied with the mandatory requirement of the SAST Regulations, the Noticees have avoided the expenditure which otherwise they would have incurred towards cost of engaging the services of a Merchant Banker, making public announcement in newspapers, filing of offer document with SEBI, dispatch of offer document to the eligible share holders, etc. To this extent, it can be said that the Noticees have earned disproportionate gain or unfair advantage. The fact remains that had the Noticees made a public announcement to acquire 15% of the shares of DASIL, the shareholders of DASIL would have got an opportunity/option to tender their shares pursuant to such an open offer and exit from the company at a price to be determined under the SAST. This opportunity/option was denied to them. Further, such an announcement if made would have also impacted the movement of the price of the shares of DASIL on the stock exchanges. Thus, the exit opportunity available to the shareholders through the open offer which the Noticees ought to have made under the SAST would have been in addition to the exit route through the secondary market. There was an opportunity loss to the shareholders at large inasmuch as the Noticees denied an exit opportunity to the shareholders through the open offer process which was legitimately due to them.

49. Taken in that context, in order to compute the disproportionate gain or unfair advantage enjoyed by the acquirers/Noticees, I have perused the records and have noted that there are no quantifiable figures available on that count. There are also no figures or data on record to quantify the amount of loss caused to the investors as a result of the default.

ORDER

50. After taking into consideration all the facts and circumstances of the case, I impose following penalty under Section 15 A (b) and 15H on the Noticees which will be commensurate with the violations committed by them.

No	Name of the Noticees:	Penalty under 15 A(b) and 15H (ii)
1	Mr. G.S Sridhar	₹. 4,00,000/- (Rupees four lakh only).
2	Mr. P.V Murali Krishna	₹. 4,00,000/- (Rupees four lakh only).
3	Mr. A. Rajendra Prasad	₹. 4,00,000/- (Rupees four lakh only).
4	Mr. R. Shankar	₹. 4,00,000/- (Rupees four lakh only).
5	Dwarkadhish Import & Export Pvt Ltd	₹. 4,00,000/- (Rupees four lakh only).
6	Burlington Financial Services (P) Ltd	₹. 4,00,000/- (Rupees four lakh only).
7	Ekveera Computers (P) Ltd.	₹. 4,00,000/- (Rupees four lakh only).
8	Hemdil Financial Services Ltd. (Name changed to M/s Camelot Advisory Services Ltd)	₹. 4,00,000/- (Rupees four lakh only).
9	Prathakal Comm & Ag (P) Ltd.	₹. 4,00,000/- (Rupees four lakh only).

51. The Noticees shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Prashanta Mahapatra, Investigations Department- 1, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

52. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: **April 26, 2012.**	**BARNALI MUKHERJEE**
Place: **Mumbai**	**ADJUDICATING OFFICER**