WTM/RKA/ISD/163/2016

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 12A OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 - IN THE MATTER OF DEALINGS IN THE SHARES OF ECO FRIENDLY FOOD PROCESSING PARK LIMITED, ESTEEM BIO ORGANIC FOOD PROCESSING LIMITED, CHANNEL NINE ENTERTAINMENT LIMITED AND HPC BIOSCIENCES LIMITED

In respect of:

S. No.	Name of Entities	PAN
Preferential allottee of shares of Channel Nine Entertainment Ltd.:		
1.	Ms. Uma B Ramesh	AAEPR5594C
Preferential allottees of shares of Eco Friendly Food Processing Park Limited.:		
2.	Sanjeev Tandon (Huf)	AAMHS1255B
3.	Umesh Kumar Danwani	ACQPD4748N
Preferential allottees of shares of HPC Biosciences Limited.:		
4.	Sangeeta Naresh Mittal	ABHPM7083M
5.	Surekha Ashok Mittal	AEQPM1717C
These entities are collectively referred as *'noticees'* or individually by their names.		

1. Securities and Exchange Board of India ("SEBI") vide an *ad interim ex-parte* order dated June 29, 2015 read with Corrigendum dated January 04, 2016 (hereinafter collectively referred to as "*interim order*") restrained 254 entities including Eco Friendly Food Processing Park Limited (hereinafter referred to as "Eco"), Esteem Bio Organic Food Processing Limited (hereinafter referred to as "Esteem"), Channel Nine Entertainment Limited (hereinafter referred to as "CNE") and HPC Biosciences Limited (hereinafter referred to as "HPC") [collectively referred to as "the scrips/the companies", listed on the Small and Medium Enterprise ("SME") Segment of the Bombay Stock Exchange Limited ("BSE")] from accessing the securities market and further prohibited them from buying, selling or dealing in securities in any manner whatsoever, till further directions. The persons/entities against whom the *interim order* was passed were advised to file their objections, if any, within twenty one days from the date of the order and, if they so desire, to avail themselves of an opportunity of personal hearing before SEBI.

2. The *interim order* was passed taking into account facts and circumstances more particularly described therein and summarised, *inter alia,* as under:-

a) The aforesaid four companies had very small share capital prior to the year 2011. In the year 2011 and 2012, the companies increased their capital base by issuing shares to several entities, (hereinafter referred to as "*preferential allottees*"), by way of preferential allotment and later by issuing bonus shares. Certain *preferential allottees* transferred their shares held in the respective companies to several entities (hereinafter referred to as "*pre IPO transferees").*

b) Thereafter, all the four companies came out with IPOs and the entities belonging to the *Funding Group* (as defined in the *interim order*) funded substantial portion of the IPOs. The IPO proceeds of the respective IPOs were immediately routed back to the entities of the *Funding Group* by the concerned companies thereby allegedly financed their own IPO and allotted shares without receipt of consideration to the extent they returned the subscription monies to the *Funding Group* from the IPO proceeds. The *Funding Group* cumulatively financed the subscribers in the aforesaid four companies, to the tune of □17.62 crore and received back □30.06 crore from the said companies immediately after the IPOs.

c) The respective companies had actively concealed the deviation in utilisation of IPO proceeds as they deliberately did not make any disclosures as required under clause 46 of the SME Listing Agreement.

d) Once the shares were listed on the stock exchange, the *Trading Group* (as defined in the *interim order*) entities increased the prices of the scrips astronomically through manipulative trades.

e) The said price movement was not backed by fundamentals or any announcements made by these companies.

f) After the expiry of the lock-in period, the *Trading Group* entities purchased shares from the *preferential allottees* and *pre-IPO transferees* at artificially increased prices.

g) In the whole process, entities of the *Trading Group* provided a hugely profitable exit to the *preferential allottees* and *pre IPO transferees*.

h) Consequently, all the preferential allottees and pre-IPO transferees have collectively made a profit of □614 crore.

i) The funds required for purchase of shares by the *Trading Group* entities had been provided to them through layering of fund transfers from several entities including the entities belonging to the *Funding Group*.

j) It was therefore alleged that the *preferential allottees*, *pre IPO transferees* acting in concert with *Funding Group* and *Trading Group* have used the stock exchange system to artificially increase volume and price of the scrip for making illegal gains and to convert ill-gotten gains into genuine one. The whole scheme could not have been possible without the involvement/ connivance of the four companies, their promoters and their directors.

3. The *interim order* has alleged that the acts and omissions of the four companies, *Funding Group*, *Trading Group entities*, *preferential allottees* and *pre-IPO transferees* are *prima facie* 'fraudulent' as defined under regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations") and are in contravention of the provisions of Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(a), (b), (c), (d), (e) and (g) thereof and section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). This allegation against the Ms. Uma B Ramesh, Sanjeev Tandon (HUF), Umesh Kumar Danwani, Sangeeta Naresh Mittal and Surekha Ashok Mittal is made on the basis of following:

(a) The noticees forming part of *Trading Group* acted as buyers to the *pre IPO transferees/ preferential allottees* thereby creating artificial demand for the supply of shares from *preferential allottees/ pre IPO transferees*.

(b) The noticees forming part of *Trading Group* are connected among themselves and provided hugely profitable exit to the *pre IPO transferees/ preferential allottees* in such scrips that hardly had any credential in the market.

(c) In the process, the noticees of *Trading Group* acting in concert with the *pre IPO transferees/ preferential allottees* misused the stock exchange system to provide fictitious Long Term Capital Gain (LTCG) benefit to the *preferential allottees/pre IPO transferees* so as to convert unaccounted income into accounted one with no payment of taxes as LTCG is tax exempt.

(d) Securities market system was used to artificially increase volume and price of the scrip for making illegal gains and to convert ill-gotten gains into genuine one.

(e) Thus, the *preferential allotment* was used as a tool for implementation of the dubious plan, device and artifice of the *noticees* and the *preferential allottees/pre IPO transferees*.

4. Pursuant to the *interim order*, noticees filed their replies in the matter. While proceedings were in progress, opportunity of inspection was afforded to noticees who had sought for the same. Information/documents which were relied upon by SEBI for passing the *interim order* were also provided to noticees who had requested.

5. The noticees seeking personal hearing were granted opportunities of personal hearings on several dates. Ms. Uma B Ramesh attended the personal hearings and others submitted that they would not be able to personally appear before the Hon'ble WTM and have made all their submissions through various replies.

6. It is relevant to mention that SEBI has passed several interim orders in similar cases against several entities based upon prima facie findings and pending investigations in those matters. In response to such interim orders several entities filed their replies praying for revocation of order and for certain common interim reliefs pending passing of confirmatory orders.

Considering the large number of entities covered in such orders (more than 1200), complexities involved in the issues such- as inter linkages of different tranches of alleged schemes, connection/relation amongst transacting parties in different tranche of scheme, it was considered appropriate to consider the facts and circumstances in totality after hearing maximum possible entities. After considering the facts and circumstances brought out by these entities who had responded to interim orders, to avoid erosion of value of securities due to volatility, maintain some investment avenues in the Capital Market such as Mutual Fund and to address the need of funds for meeting the business/ any other exigencies, all these entities were granted certain common interim reliefs, including the following:-

(a) to sell the securities lying in their demat accounts as on the date of the respective *interim order*, other than the shares of the companies which are suspended from trading by the concerned stock exchange and keep the sale proceeds in an escrow account;

(b) to utilize such sale proceeds for the purpose of investment in mutual fund units and fixed deposits.

(c) to utilize 25% of their portfolio value for their business purposes and/or for meeting other exigencies subject to the condition that the balance portfolio value does not go below the profit/loss made by them.

7. In the above background, vide letter dated February 29, 2016 and May, 31, 2016, the following reliefs were allowed to the noticee:

(i) to subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;

(ii) to avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.

(iii) to sell the securities lying in their demat accounts as on the date of the interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange and the shares of 4 scrips in the SME segment in which the Interim order dated June 29, 2015 has been passed, in orderly manner under the supervision of the stock exchanges so as not to disturb the market equilibrium and deposit the sale proceeds in an interest bearing escrow account with a nationalised bank.

(iv) to utilise and deal with the sale proceeds, lying in the aforesaid escrow account under the supervision of the concerned stock exchange, as provided hereunder:-

(a) the sale proceeds may be kept in a fixed deposit with a nationalised bank or may be utilised for subscription to units of the mutual funds which shall always be held in the demat form and if such units are redeemed the proceeds thereof shall be credited to the aforesaid escrow account or may be utilised for subscription to the units of mutual funds;

(v) The aforementioned window for sale of shares lying in respective portfolio shall be withdrawn if the Noticees execute any trade beyond those mentioned in clause (iii) above. The aforesaid reliefs shall be subject to the supervision of the stock exchanges and depositories.

For the purposes of determining the portfolio value of the entities, it was informed to the above noticees that the value of portfolio of securities lying in the demat account/s (individual and joint both) on the date of the *interim order* after excluding the value of shares that have been suspended from trading as on the date of the communication shall be considered. For NBFCs and stock brokers the value of portfolio shall exclude the value of clients' securities lying in their demat accounts.

8. In addition to the above reliefs, Ms. Uma B Ramesh was also allowed "*to utilise up to 25% of the value of their portfolio as on the date of the interim order for their business purposes and/or for meeting other exigencies".*

9. SEBI passed an Interim order dated June 29, 2015 and corrigendum to the interim order dated January 04, 2016, wherein 254 entities were debarred from accessing the securities market. Confirmatory orders dated February 17, 2016, June 14, 2016 and August 25, 2016 against 230 entities have been passed till date

10. While the proceedings were going on, Ms. Uma B Ramesh, filed an appeal before the Hon'ble Securities Appellate Tribunal ("the Hon'ble SAT") to pass an order to setting aside and reversing the part of the *interim order* so far as it is applicable to her and grant urgent interim and ad interim relief. Hon'ble SAT vide order dated October 7, 2016 directed SEBI to hear Ms. Uma B Ramesh on October 14, 2016 and pass an pass an order on merits as expeditiously as possible and in any event within four weeks from the date of order. The hearing on October 14, 2016 could not be held due to certain reasons, and the matter was again represented before SAT wherein it was submitted that the hearing to Ms. Uma B Ramesh would be rescheduled on October 20, 2016 or October 21, 2016. Accordingly in compliance with the directions of Hon'ble SAT, hearing to Ms. Uma B Ramesh was scheduled on October 20, 2016 which was attended by her authorised representative.

11. This order deals with respect to 5 entities and order with respect to 19 entities will be passed post the hearing is concluded. Accordingly, the proceedings against 5 entities are being dealt with in this order.

12. I note that the *interim order* highlighted the profit/gain earned by the *preferential allottees/pre IPO transferees*. The details of the profit/gain earned by the *preferential allottees* covered in this order and against whom confirmatory directions have been dealt in the order are tabulated below:

S. No.	PAN	Name	Profit (LTCG) (in □)
1.	AAEPR5594C	Uma B Ramesh	14146400
2.	AAMHS1255B	Sanjeev Tandon (HUF)	13785540

3.	ACQPD4748N	Umesh Kumar Danwani	12782280
4.	ABHPM7083M	Sangeeta Naresh Mittal	21711984
5.	AEQPM1717C	Surekha Ashok Mittal	21524055

13. Considering the fact that several opportunities of hearing was given and that the replies are similar/identical, even though some of the entities are delaying by seeking adjournment/documents, it is observed that the proceedings for passing of confirmatory order pending investigation in the matter in respect of 5 persons/entities (out of the remaining 24 entities of the total 254 entities) are now complete and the appropriate order in the matter *qua* such noticees herein needs to be passed on considering their replies/submissions and relevant material available on record. The replies/submission of the noticees are *inter alia* as under:

1. **<u>Uma B Ramesh (Represented by Advocate Ankit Lohia, Advocate Rishika Harish, Mr. Aditya Bhansali and Ms. Nirali Mehta)</u>**

a) She denied the allegations made against her in the ex-parte order/corrigendum order. Nothing stated in the ex-parte order/corrigendum order shall be deemed to be admiited by her merely on account of non-traverse.

b) The ex-parte ad interim order or the corrigendum has no averments/observation/finding to suggest that there existed any relation/connection/prior meeting of her with the entities who had influenced the price and volume of the scrip

c) She doesn't have any relation/connection with CNE, its Directors/ Promoters, the Funding or Trading group of entities or with the company or any other entities mentioned in the order. There is no evidence or basis or a prima facie finding or explicitly mentioning the role played by her/ preferential allottees or any connection with entities except her father Mr. V. Balasubramanium and her mother Mrs. Rajeswari Balasubramanium in alleged manipulative scheme mentioned in the order. Failure to provide such material is bad, being contrary to the settled principles of natural justice.

d) Her authorised representative submitted at the time of hearing that her trades did not match with the Trading group entities, hence it cannot be termed as she was provided exit by the entities forming part of trading group.

e) The order completely ignored the factual position that preferential allottees had no role to play in the fraudulent scheme. The order completely neglects the fact that the alleged scheme of manipulation might have been floated for the benefit of IPO allottees along with any other persons.

f) The investment in the shares of CNE was from her own funds on the basis of yielding profits. The order does not contain any specific charge against her, nor role played by her in the alleged manipulation. She highlighted the judgement in the matter of Shanker

Goyal and Ors Vs The Municipal Council, Ajmer AIR1997Raj176 that every piece of evidence to justify issuance of an ad interim order.

g) There is no urgency in exercising powers under Section 11(1), 11(b) and 11(4) of SEBI Act and passing of an ex-parte order, without proper adjudication of various issues, has resulted in violation of principles of natural justice. Exercise of an arbitrary power is unwarranted and unjustified in the facts and circumstances of the instant case. No prima facie case has been made out to warrant the issuance of such an Ex parte ad interim order/directions of such serious consequences against her. The alleged imminent urgency has not been explained to support the said Order.

h) There is no evidence that balance of convenience is in favour of SEBI while exercising its power to pass/grants ad interim directions/ relief on whose directions are issued.

i) She has not been provided any material to establish that the alleged injury/ harm caused to the securities market/ to the public at large. For the same, she highlighted the judgement in the matter of Multichannel (India) Ltd, Mumbai Vs Kavitalaya Productions Pvt Ltd, Chennai.

j) Her trade's contribution was merely 0.65% and therefore has not contributed to the volume. Further, she has submitted that she sold at less than the highest price of the scrip on the trading day and did not resort to any collusion in the process of selling shares of CNE. Had she prior understanding with the Trading Group of entities, she would have exited at a higher price.

k) She is not part of the alleged scheme, plan, device or artifice vide which, certain entities had allegedly used securities market mechanism for making illegal gains and to convert ill-gotten gains into genuine ones, is completely wrong and illegal on the part of SEBI.

l) She has not employed either directly or indirectly any device, scheme or artifice to defraud. Hence, she denied the violations of provisions of Regulation 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003.

m) She has not dealt in securities in a fraudulent manner or indulged in an unfair trade practice, involving fraud

n) The order has passed on the basis of conjectures, surmises and probabilities and she has referred certain following judgements

- Sterlite Industries (India) Ltd Vs SEBI (2001) 34 SCL 485 (SAT).
- Mohan Sigh Vs Bhanwarlal (AIR 1964 SC 1366)
- Ramjanbhai Nagribhai Patel Vs Jasvant Singh Udersingh Dabhi (AIR 1978 SC 1162)
- Varanasaya Sanskrit Vishwa Vidyalaya & Anr. Vs. Dr. Rajkishore Tripathi and Anr, (AIR 1977 SC 615)

o) She requested the order against her shall be quashed and all charges, inquiries, investigations be dropped and allow her to deal in cash and F&O segment.

2. <u>Sanjeev Tandon (HUF) and Umesh Kumar Danwani</u>

a) They are not able to understand the exact nature of alleged violation by them and they have been bundled with a group of entities completely unknown to them.

b) The order passed without any prior letter/communication/notice or any correspondence seeking their explanation or clarification is basis principles of law of equity, fair play and natural justice.

c) They are retail investor and they trade in the market keeping utmost faith on SEBI & Stock Exchanges. They submitted that their transactions were genuine, fair, transparent and bonafide and not in violation of any provisions of securities market.

d) Price of the ECO has remained more or loss stable during their transaction dates and therefore no loss ought to have been caused to any investor who dealt in the shares of ECO.

e) The restraint order against them is breach of fundamental right of carrying on business under the constitution of India.

f) There is no grievance, objection or cautionary notice was issued by stock exchange or SEBI with respect to IPO and bonus issue of ECO.

g) There is no connection/ relation/ financial dealing with ECO/ Directors/ Promoters/Merchant Banker or any of the entities alleged in the order.

h) They have not employed any device, scheme or artifice to defraud anyone or any manipulative or deceptive device in contravention of the provisions of SEBI Act or rules or regulations. They have not indulged in fraudulent or unfair trade practice. They have submitted that strict proof and compelling evidence is required for a serious charge of fraud as per the decision of Hon'ble SAT in *Parsoli Corporation.*

i) They have not violated provisions of regulations 2(1) (c) of the PFUTP Regulations, as alleged or that their trading were in violation of regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (e) and (g) thereof. It is further denied that they had contravened provision of section 12A(a), (b) and (c) of SEBI Act, 1992.

j) SEBI has not provided any cogent evidence w.r.t unsubstantiated and sweeping allegation levelled against them. No connection has been provided with the entities alleged in the interim order.

k) They invested in ECO in the normal course of business based on its future prospects and growth potential and not the present financials of the company.

l) They have limited skill and experience of fundamental and technical research before making an investment decision. Thus, their investment decisions are mostly made on the basis of news and rumors in print media, investment decision of other investors and the intuition & psychology of the other investors.

m) They followed and complied with all procedure and requirements of the capital market through their broker and stock exchanges. There is no grievance by any investor or broker or stock exchange or any other agency concerned in the matter.
n) The trades are done in screen based trading and hence it is not possible to identify the counter party.
o) Sanjeev Tandon (HUF) submitted that he traded on only 9 days out of 225 days and that too on prevailing market price and volume and which did not have any impact on the price/volume of the scrip.
p) There is no need, necessity or rationalization delineated in the order for use of powers under Section 11 of SEBI Act.
q) Mr. Umesh Kumar Danwani has submitted that he is an businessman and dealing in Eco shares has been in the nature of share trading activity and profit for the sale of Eco shares has been considered as business income and have paid income tax without claiming any deductions/ set off of losses. Thus the question of avoidance of tax or non payment of long term capital gain tax is not applicable in his case.
r) They requested that the order against them be made inoperative, discharge them from all allegations and permit them to buy and sell shares and mutual funds and utilize the entire proceeds for their need based requirement.

3. <u>Sangeeta Naresh Mittal and Surekha Ashok Mittal</u>

a) The aforesaid Interim Order has been issued ex parte and they have been condemned unheard in gross violation of cardinal rule of 'audi alteram partem' and therefore violates basic principles equity, fair play and natural justice.
b) Their demat account has been frozen and SEBI has acted beyond its scope, purview and power and transgressed the power delegated to it by the Parliament of India.
c) They have not bought, sold or otherwise dealt in HPC in a fraudulent manner at all and have not indulged in an act which created false or misleading appearance of trading in scrip of HPC.
d) They have not advanced any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to the issue of HPC
e) They did not pay, offer or agreed to pay, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in HPC with the object of inflating, depressing, maintaining or causing fluctuation in the price of HPC
f) They have drawn attention to following judicial pronouncements:
    i. In the case of Painter v. Liverpool Oil Gas Light Co.it was observed that "A party is not to suffer in person or in purse without an opportunity of being heard"

ii. In case of A.R. Antulay v. R.S. Nayak, the aforesaid principle was considered to be a basic requirement of the rule of law and described as 'foundational and fundamental concept"

g) SEBI has not provided them with any cogent evidence w.r.t unsubstantiated and sweeping allegation levelled against them.

h) Ex-parte Order seeks to create a tenuous and nonexistent link between them and Preferential Allottees, the Company, directors/promoters of HPC, 'pre-IPO transferees' and allegedly connected entities.They have no financial dealings or nexus with the alleged HPC group or its promoters, directors or employee, 'Funding Group' and buyer of their shares and merchant banker

i) They invest in a company based on its future prospects & growth potential and not the present 'financials' of the Company

j) They have paid for the shares of HPC from their legitimate income, from their bank account and has been properly accounted and fully disclosed to all the authorities including Income Tax and all the applicable taxes have been duly paid.

k) All the transactions were executed through the normal screen based trading system of Stock Exchange and their sale quantity was only minuscule percentage of the total market volume in the scrip at the relevant point of time.

l) They have submitted that the present Interim Order is harsh and they have been wrongly roped into the present penal proceedings hence humbly requested that:

i. The Interim Order as far as it is applicable to them be made inoperative.

ii. The allegation against them and charges qua me be quashed and they may be discharged at the earliest.

iii. they may be permitted to buy and sell shares, securities and mutual funds and utilize entire proceeds thereof for their need based requirements.

14. I have considered the allegations levelled against the noticees in the interim order, their replies/written submissions and other material available on record. I note that in the instant case, the directions issued against the noticees are interim in nature and have been issued on the basis of *prima facie* findings. SEBI had issued directions vide the *interim order* in the matter in order to protect the interests of investors in the securities market. Detailed investigation in the matter is still in progress. Thus, the issue for consideration at this stage is whether the *interim* directions, issued against the noticees vide the *interim order*, need to be confirmed, vacated or modified in any manner, during the pendency of investigation in the matter.

15. The facts and circumstances of the instant case as brought out in the *interim order, prima facie,* show the *modus operandi* employed by the four companies, their directors, their promoters, *preferential allottees/pre IPO transferees, Trading group and Funding group,* who made a façade of preferential allotment followed by their respective IPOs. Once the shares were listed on the

stock exchange, the *Trading Group* entities started pushing up the price of the scrip through manipulative trades and increased the prices of the scrips astronomically. After the expiry of the lock-in period, the *Trading Group* entities purchased shares from the *preferential allottees* and *pre-IPO transferees* at artificially increased prices. In the whole process, entities of the Trading Group provided a hugely profitable exit to the *preferential allottees and pre IPO transferees*. Consequently, the preferential allottees and pre-IPO transferees have collectively made a profit of □614 crore. The connection amongst the various entities across categories (companies, preferential allottees, pre IPO transferees, Trading Group and Funding Group) have been explained in the interim order. It was therefore alleged that the *preferential allottees*, *pre IPO transferees* acting in concert with *Funding Group* and *Trading Group* have used the stock exchange system to artificially increase volume and price of the scrip for making illegal gains and to convert ill-gotten gains into genuine one. It is important to note that the whole scheme could not have been possible without the involvement/connivance of companies and their promoters and directors as the *preferential allotment* was the first and vital step in the whole scheme.

16. I shall now deal with the replies/submissions of the noticees on merit. , I deem it necessary to deal with the preliminary and common submissions raised by the noticees. The first contention is that the *interim order* has been passed in complete disregard of the principles of natural justice in as much as no opportunity of hearing was provided to them by SEBI before passing the *interim order*. In this regard, I note that the *interim order* has been passed on the basis of *prima facie* findings observed during the preliminary examination/inquiry undertaken by SEBI. The facts and circumstances necessitating issuance of directions by the *interim order* have been examined and dealt with in the *interim order*. The *interim order* has also been issued in the nature of show cause notice affording the noticees a post decisional opportunity of hearing. This position has been upheld in various judgements of the Hon'ble SAT, the Hon'ble High Courts and the Hon'ble Supreme Court. Relevant portions of few such judgments are referred to hereinafter:-

(a) Hon'ble Bombay High Court in *Anand Rathi & Others Vs. SEBI* (2002 (2) BomCR 403 upheld the procedure of post decisional hearing in such matters and observed as under:

"31. It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional

hearing is given if demanded.

32. Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."

(b) Hon'ble High Court of Judicature for Rajasthan at Jaipur in the matter *M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India &Ors* (D.B. Civil WP No. 5135/2010 Raj HC) has held that:

"…Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. Even if, the facts of this case are looked into, after passing the impugned order, petitioners were called upon to submit their objections within a period of 21 days. This is to provide opportunity of hearing to the petitioners before final decision is taken. Hence, in this case itself absolute elimination of principles of natural justice does not exist. The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act. Interim orders are passed by the Court, Tribunal and Quasi Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation. This cannot be said to be elimination of the principles of natural justice or if ex-parte orders are passed, then to say that objections thereupon would amount to post-decisional hearing. Second Proviso to Section 11 of the SEBI Act provides adequate safeguards for adhering to the principles of natural justice, which otherwise is a case herein also…"

(c) Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 observed as under:

"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or

enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "

17. I, therefore, do not find any violation of principles of natural justice while passing the *interim order* as contended by the noticees. In this case, as discussed hereinabove, the purpose of the *interim order* is to achieve the objectives of investor protection and safeguarding the market integrity by enforcing the provisions of the SEBI Act. In my view, section 11(1) of the SEBI Act casts the duty on SEBI to protect the interests of the investors, promote development of and regulate the securities market, "*by such measures as it thinks fit"*. Apart from this plenary power, section 11(2) of the SEBI Act enumerates illustrative list of measures that may be provided for by SEBI in order to achieve its objective. One of the measures enumerated in section 11(2)(e) is *"prohibiting fraudulent and unfair trade practices relating to securities markets"*. The word *'measure*' has not been defined or explained under the SEBI Act. It is well settled position that this word has to be understood in the sense in which it is generally understood in the context of the powers conferred upon the concerned authority. From the provisions of section 11, it is clear that the purpose of section 11(2)(e) of the SEBI Act is to prohibit all fraudulent and unfair trade practices relating to the securities market and the Board may take any '*measures'* in order to achieve this purpose. The *'measures'* and the directions under sections 11 and 11B of the SEBI Act can be taken/issued for prohibiting the fraudulent and unfair trade practices relating to securities market and achieving the objective of investor protection, and promotion of and regulation of the securities market. It is also pertinent to mention that the *interim order* has been passed in the course of preliminary inquiry and the investigation in the matter is ongoing. Based on the *prima facie* findings in the matter and in order to protect the interest of investors in the securities market, SEBI had issued directions vide the *interim order*. In this case, as discussed hereinabove, the purpose of the *interim order* is to achieve the objectives of investor protection and safeguarding the market integrity by enforcing the provisions of the SEBI Act and the SCRA. I, therefore, do not agree with the contentions of these noticee with regard to the scope of the *interim order* and the power of SEBI in the matter.

18. The noticees have further contended that there was no emergent situation that existed which warranted SEBI to pass the *interim order* without providing them an opportunity of personal hearing. In this regard, I note that the time taken to arrive at a decision/action, as in this case, is dependent on the complexity of the matter, its scale and *modus operandi* involved and other attendant circumstances. The power under sections 11 and 11B of the SEBI Act can be

invoked at any stage i.e. either during pendency or on completion of inquiry or investigation. In the present case, the *modus operandi* where suspected entities were misusing the stock exchange mechanism came to light only in June 2015. Further, the *interim order* clearly brings out the reasons and circumstances for issuance of *ex-parte ad- interim directions*. I, therefore, do not find any merit in the above common contention of the noticees.

19. Another contention of the noticees is that the open restraint order is in breach of their fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. Article 19(1)(g) guarantees to all citizens, the right to practice any profession or to carry on any occupation, trade or business. However, at the same time it is pertinent to mention that this freedom is not unbridled, as clause (6) of Article 19 authorises legislation which imposes reasonable restrictions on this right in the interest of general public. It is a matter of common knowledge that the Securities and Exchange Board of India, 1992 is a special Act enacted by the Parliament conferring on SEBI the duty to protect the interests of investors in the securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. In the present case, the restraint order has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. As noted in the *interim order*, the conduct of the noticees has been found to be *prima facie* fraudulent and the noticees have therefore been restrained from accessing the securities market and dealing in securities till further directions. It is a settled law that while exercising his fundamental rights, a person cannot commit an act which is forbidden by law. In view of the above, I find that the open restraint order against the noticees is not in violation of Article 19(1)(g) of the Constitution of India.

20. The noticees have further contended that SEBI has attached their demat accounts without any direction made in the *interim order*. According to them, such an act of SEBI is beyond the powers conferred on it, as section 11(4)(e) of the SEBI Act requires an approval from a Judicial Magistrate and that the same has not been obtained before attaching the said accounts. To address this contention, it is pertinent to note that section 11(4)(e) of the SEBI Act requires an approval of the Judicial Magistrate of the First Class only for the purpose of attachment of "bank account(s)". It is important to mention that section 11(4)(e) does not apply to demat accounts. I note that vide the *interim order*, the noticees have been *"restrained from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner, till further directions"*. Towards implementation of the said direction, the demat accounts of the noticees have been suspended for credit and debit. Thus, neither any direction for attachment of the noticees' bank accounts has been issued vide the *interim order* nor have any of the accounts been attached pursuant to the SEBI's *interim order*. Therefore, the requirement of prior permission of the Judicial Magistrate under section 11(4)(e) of the SEBI Act does not arise.

21. The noticees have contended that after giving permission to make preferential allotment, granting listing and trading permission for the shares issued in preferential allotment, the issuance of the same cannot be questioned. In my view, this contention has no merit as preferential allotment is like any other corporate action/instrument, allowed as per the extant regulations for raising funds by corporate bodies for their business requirements. However, the same become questionable/doubtful when it is used as tool for implementation of any dubious plan or *mala fide* intention as done in the instant case in the manner described in the *interim order*. The preferential allotment in the present matter done by the four companies was a façade as described in the *interim order*. I, therefore, find no merit in the above submission.

22. The noticees have contended that there is nothing in the *interim order* to allege or demonstrate any wrong-doing on their part. They have further contended that they are not connected/related to the companies, or their promoters or directors or with any entities who are alleged to be indulged in the price manipulation or with the *Trading Group* entities. According to these entities, the basis of connection/relation with the companies is merely the preferential allotment. The noticees have also contended that they are regular investors in the securities market and have invested in the preferential allotment of the companies from their own funds considering a good investment opportunity with the sole intention of earning profit. They further submitted that certain persons/entities approached them and offered a proposal to invest in the scrips.

23. The preferential allotment of shares is an issue of shares by an issuer to select person or group of persons on a private placement basis unlike a public issue where funds are raised by inviting subscriptions from public in general. It is also a matter of common knowledge that a preferential allotment is made to the persons/entities on a one-to-one basis who are acquainted/familiar with the company and/or its promoters/directors. A preferential allotment is always for the purposes of meeting fund requirements of the concerned company and involves a covert, manifested and planned actions by the concerned parties, i.e.,-

(a) the company to identify select persons/group of persons who are known to it or its promoters/directors for investing in its share capital;
(b) select persons/group of persons (preferential allottees) exercise due diligence and then finance the fund requirements of the company and subscribe to its shares issued on preferential basis;
(c) the company allots shares to the preferential allottees.

24. It is matter of common knowledge that in a private placement, wherein allotment is made to select persons or group of persons on one to one basis, the issuer and their promoters/

directors have connection on account of acquaintance and familiarity. Such inference of connection becomes stronger in case of private placement by an unlisted companies whose shares are not tradeable in market. Thus, it has to be inferred that in the case of preferential allotment by the aforesaid companies, the companies and their promoters/ directors had prior understanding, arrangement and purpose. A preferential allotment is not an "open to all" type of investment opportunity as sought to be contended by the noticees. A company will, in no case, make a preferential allotment to a stranger who just approaches it for allotment of its shares. A preferential allotment is always for the purposes of meeting fund requirements of the concerned company and involves a covert and manifested action on one part of the company to issue its shares on preferential basis to select persons/ group of persons who are known to it or its promoters/directors and on the other part of the preferential allottees to finance the fund requirements of the company and subscribe to its shares.

25. The shares of Eco was listed on January 14, 2013, Esteem was listed on February 07, 2013, CNE was listed on March 12, 2013 and HPC was listed on March 19, 2013. Prior to the listing of the shares of the said 4 companies, the trading in their shares could have happened only between the entities on a one to one basis. Further, when asked during the personal hearing, the noticees/their authorized representatives failed to give any plausible explanation as to how the company could make allotment to the *preferential allottees* if they were not known to it or its promoters/directors. I also note that the noticee have not been able to furnish any satisfactory documentary evidence that they were approached by companies for the preferential allotment, or in providing the details of the offer made by companies to them and other details of communication between them and companies in that regard. It is important to note that financing of a company by way of preferential allotment, as found in this case, pre-supposes a nexus and prior understanding amongst the issuer, its promoters/directors and the allottees.

26. As explained in the *interim order,* the infusion of funds/purchase of securities of an unlisted company which lacked credentials suggests that the *preferential allottees* (including the noticees) and the *pre IPO transferees* had nexus with the companies and their management. The ultimate beneficiaries of the whole scheme in question are the *preferential allottees* and *pre IPO transferees* and as such they cannot pretend to be oblivious to the scheme/plan/device/artifice in question. In view of the above reasons, I, hereby reject the contentions of the noticees that they do not have any connection/nexus with the entities mentioned in the *interim order*.

27. The noticees have also contended that they have traded on the anonymous screen based system of the stock exchanges and as such their trades cannot be regarded as having manipulative/fraudulent intent. In this context**,** I note that in the screen based trading, the

manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. In this context, vide its order dated July 14, 2006, in *Ketan Parekh vs. SEBI* (Appeal no. 2/2004), the Hon'ble SAT has observed that:

"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, ..., the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

28. The noticees have also contended that their contribution to the total market volume was very less and insignificant. As regards the submissions of the noticees, I reiterate that individually their contribution might appear to be a very small percentage of the total trade on a given day, however, when seen holistically, even such small percentage of trades contributed to the profitable exit of the *preferential allottees*.

29. In the present case, the *interim order* has observed *prima facie* as to how the stock exchange mechanism has been misused and manipulated for the purposes of giving profitable exit (*where the Trading group had already pushed the prices up through manipulation*) to the *preferential allottees/pre IPO transferees* for availing exemption on LTCG tax gains and /or for converting unaccounted income into accounted income.

30. The noticees have also raised another contention that they did not have any role in the manipulation of the price of the scrip of the companies or in the entire plan described in the *interim order*. They have further contended that there is no material to prove that their acts were "fraudulent" and that they violated the provisions mentioned in the *interim order*. In this regard, I note that the facts and circumstances of the instant case discussed hereinabove and in the *interim order* indicate that the preferential allotment was an essential and important act in the whole scheme of things and the need to make such preferential allotment to achieve the end objective of the scheme has been amply brought out in the *interim order*. The *interim order* has reasonably highlighted the *modus operandi* wherein the company in nexus with the preferential allotees made a façade of preferential allotment ostensibly to increase the share capital base and thereafter listed the company with the aid of entities belonging to *Funding Group*. Once the shares of these companies were listed on the SME platform of the BSE, the *preferential allotees/ pre IPO transferees*, with the aid of the entities of *Trading Group*, misused the stock exchange mechanism to exit at a high price in order to book illegitimate gains with no payment of taxes as LTCG is tax exempt. Further, paragraphs 25 to 33 of the *interim order* specifically discuss the manner in which *preferential allottees and pre IPO transferees* sold their shares pursuant to abnormal increase in price in a manipulative way and made huge

illegitimate profit in the whole process. The entire scheme of activities points to an inference that the preferential allotment, manipulation and resultant price rise was done only to favour the *preferential allottees/pre IPO transferees* to book profits which are tax exempt. In view of this background and facts and circumstances, I find that the acts of the noticees discussed in the *interim order* are *prima facie* fraudulent and in contravention of the provisions of securities laws mentioned therein. I, therefore, reject the contentions of the noticees in this regard.

31. Mr. Umesh kumar Danwani have contended that he has not claimed any tax exemption on the income profit earned on the sale of shares of Eco and have paid Income Tax without claiming any deductions. and despite the same, bald and sweeping allegation of generating fictitious LTCG so as to convert unaccounted income of *preferential allottees* and one with no payment of taxes has been made against him. He has submitted the copy of income tax return or the copy of challan for payment of income tax. I note that the *interim order* has been passed against the entities therein for misuse of stock exchange mechanism for generating fictitious LTCG benefit. The claims made by the aforesaid *noticee* needs to be further verified and is a matter of further investigation. With respect to fictitious LTCG benefit, the matter has been already referred to Income tax Department, Enforcement Directorate and Financial Intelligence Unit. SEBI is investigating the probable violations of securities laws including the misuse of stock exchange mechanism for generating fictitious LTCG, wherein detailed investigation is still in progress.

32. Noticees have also contended that SEBI has made sweeping, bald and common observations against them, amongst others in the *interim order* and there has been no attempt to examine their particular and individual role in the matter. In this regard, it should be appreciated that the in the *modus operandi* as observed in the matter, individual contribution to the scheme might look to be insignificant but collectively it completes the circle of manipulation, deceit or fraud. Further, the manner of their linkages/connection with the others allegedly forming part of the scheme have been discussed in the *interim order*. Accordingly, I do not find merit in such submissions.

33. Ms. Uma B Ramesh have contended that their sell transactions matched with the entities, who are not even mentioned in the *interim order*. Hence, the allegation that they were provided exit by *Trading Group* entities is erroneous. In this regard, It is important to note that the noticees are the benefeciaries of the entire scheme brought out in the *interim order*. Further the role of possibility of involvement of other entities to whom the noticees sold thei shares in the entire scheme cannot be totally ruled out at this stage. Therefore, I note that investigation in the present matter is still pending and the role of other entities in the entire *modus operandi*, including providing exit to the *preferential allottees/pre IPO transferees*, is also under investigation. As brought out above, I note that the connection/nexus between the noticees, companies

and its directors/promoters is inferred based on the facts and circumstances of this case and the material available at this stage.

34. Considering the above observations in the light of the facts and circumstances of the case and the material on record indicate that noticees were acting in concert with other entities named in the *interim order* towards a common objective that has been brought out in the *interim order*. The investment made by the *preferential allotees* (including the noticees) cannot be termed as a rational investment behaviour and such investment, as in this case, could be possible only if the *preferential allotees* (including the noticees) had nexus with the companies, their promoter /directors and the issue of such shares was under a prior arrangement between them for an objective other than for providing equity capital to the company. The trading data also reveals that most of the shares sold by the *preferential allotees and pre IPO transferees* were bought by the entities of the *Trading Group*. In my view, this cannot be termed as a coincidence especially when sellers have nexus with the company, as mentioned in the *interim order*. As brought out in the *interim order*, ultimate beneficiaries of the whole scheme in question are the *preferential allottees and Pre IPO Transferees*. It is beyond reason to hold that the company, its promoters/directors, *Trading group* and *Funding group* would devise the impugned plan/scheme for the benefit of the entities who are neither party to the plan/scheme nor have any complicity in the plan with others. As, the noticees, who are the *preferential allottees,* are the ultimate beneficiaries, they cannot pretend to be oblivious to the scheme/plan. The facts and circumstances of this case, in my view, strongly indicate that the issue of these shares was under a prior arrangement between them for the ulterior motive or the end objective of the scheme that has been brought out explicitly in the *interim order*.

35. Accordingly, I *prima facie* find that the *preferential allottees, pre IPO transferees* acting in concert with *Funding Group* and *Trading Group* have used the stock exchange system to artificially increase volume and price of the scrip for making illegal gains and to convert ill-gotten gains into genuine one. The whole scheme could not have been possible without the involvement/ connivance of companies and their promoters and directors.

36. The 5 noticees (covered under this order), have failed to give any plausible reasoning/explanation, at this stage, for their acts and omissions as described in the *interim order* and have not been able to make out a *prima facie* case for revocation of the *interim order*. I, therefore, in this case, reject the prayers of noticees for setting aside the *interim order* or for complete removal of restraint imposed by it. I, therefore, do not have any reasons to change or revoke the ad *interim* findings as against them in the *interim order*.

37. Having dealt with the contentions of the noticees as aforesaid, I note that they have raised concern over challenges in running their activities on account of ban and consequent freezing

of their demat accounts. These entities have pleaded for removal of the restraint imposed vide the interim order or at least allow them partial relief of permitting trading in securities other than those involved in this case and also allow them to deal in cash and F&O segment. It is worth mentioning that the case in hand is peculiar as large number of entities have been restrained and the ongoing investigation in the matter may take time in completion. I have been conscious that the restraint order should not cause disproportionate hardship or avoidable loss to the portfolio of the noticees. That is why several relaxations, such as allowing investment in mutual fund units, permission to liquidate existing portfolio and keep the proceeds in escrow account and even utilize 25% of the proceeds for meeting exigencies, etc. have been made in the past. Now at this stage, considering the facts and circumstances of this case and submissions/oral arguments made before me, I deem it appropriate to make further relaxations so as to address the issues of the personal and business exigencies or other liquidity problems.

38. Considering the above, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, read with sections 11(1), 11(4) and 11B thereof, hereby confirm the directions issued vide the *ad interim ex parte* order dated June 29, 2015 read with Corrigendum Order dated January 04, 2016 as against the noticees except that they can:-

(a) enter into delivery based transactions in cash segment in the securities covered in NSE Nifty 500 Index scrips and/ or S&P BSE 500 scrips;
(b) subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;
(c) deal in Debt/Government Securities;
(d) invest in ETF
(e) avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.;
(f) tender the shares lying in their demat account in any open offer/delisting offer under the relevant regulations of SEBI.

39. Further considering business and personal exigencies and liquidity problems submitted by the noticees I allow further relaxations/reliefs to the noticees as under:-

(a) They are permitted to sell the securities lying in their demat accounts as on the date of the interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange and the shares of the four scrips in the SME segment covered under this order, in orderly manner under the supervision of the stock exchanges so as not to disturb the market equilibrium and deposit the sale proceeds in an interest bearing escrow account with a Scheduled Commercial bank.

(b) They may deal with or utilize the sale proceeds lying in the aforesaid escrow account under the supervision of the concerned stock exchange as provided under:-

i. the sale proceeds may be utilised for investments permitted in para 38;

ii. upto 25% of the value of the portfolio as on the date of the *interim order* or the amount* in excess of the profit made /loss incurred or value of shares purchased to give exit, whichever is higher, may be utilized for business purposes and/or for meeting any other exigencies or address liquidity problems.

* *The amount will include the value of portfolio in the demat account*

Explanation: For the purposes of determining the portfolio value of the entities, the value of portfolio of securities lying in the demat account/s (individual and joint both) on the date of the interim order after excluding the value of shares that have been suspended from trading as on the date of the communication shall be considered.

(c) The aforesaid reliefs shall be subject to the supervision of exchanges and depositories. The stock exchanges may use the existing mechanism available for implementing the similar interim relief earlier granted to some of the entities.

40. This order is without prejudice to any enforcement action that SEBI may deem necessary against the aforesaid noticees on completion of the investigation in the matter.

41. This order shall continue to be in force till further directions.

42. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

Sd/-

DATE: OCTOBER 27, 2016 **RAJEEV KUMAR AGARWAL**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA