

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND IN CONTINUATION OF ORDERS DATED JUNE 01, 2016, OCTOBER 10, 2016 AND AUGUST 24, 2016.

IN THE MATTER OF DHYANA FINSTOCK LIMITED.

In respect of:

S.No.	Noticees	PAN
1	Dhyana Finstock Limited	AABCP8561B
2	Priyanka Nrupesh Tripathi	AHVPT3728L
3	Harshadkumar Patel	AGMPP7021Q
4	Rajeshkumar Theophilbhai Christie	AKAPC0179L
5	Ashokbhai G Jaratal	AOCPJ0735R
6	Mayaben Ashokbhai Jaratal	AOCPJ0760Q
7	Shaluben Nikeshbhai Shah	AHVPG4424G
8	Aneelkumar Albertbhai Patel	ALOPP2057M
9	Priti Jayakarbhai Christian	AQBPC1558Q
10	Shailesh Baldevbhai Patel	AOEPP2788Q
11	Harshaddkumar Baldevbhai Patel	AOKPP9234R
12	Birju Pravinchandra Sanghvi	ALLPS1169E
13	Sanjay Bhikhabhai Vaghani	AABPV4486G
14	Manharbhai Vallabhbhai Vaghani	ABOPV3650L
15	Mahesh Vallabhbhai Vaghani	AAWPV3196N
16	Hareesh Bhikhabhai Vaghani	ABPPV4917M
17	Kantilal Amulkhadas Vohera HUF	AAFHK8045N
18	Kantilal Amulkhadas Vohera	ACHPV3687R
19	Jayprakash Maneklal Patel	ABCPP1959N
20	Ashok Kumar Sethi	AGTPS5503P
21	Kalpesh Ugarchand Gadhecha	ABTPG3143L
22	Suresh Chinde Gowda	AHVPG4424G
23	Purvash Nareshbhai Chauhan	AHKPC9950A

Background

1. SEBI, vide an ad interim ex-parte order dated June 01, 2016 (hereinafter referred to as "*interim order*") in the matter of Dhyana Finstock Limited (hereinafter referred to as "*Dhyana*" or "the company"), restrained 76 entities, including the aforesaid 23 entities (hereinafter referred to as "Noticees"), from accessing the securities market and further prohibited them from buying, selling or dealing in securities in any manner whatsoever, till further directions. Further, it was also directed that BSE shall withhold the pay-out of funds for the trades in *Dhyana* executed on July 27, 2015 and keep the same in interest bearing escrow account and shall release the securities to the buyers for the trades executed on July 27, 2015. All the 76 entities including the 23 noticees mentioned above, 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 background of the matter is summarised, inter-alia, as under:
 - a) The equity shares of the company were listed on Ahmedabad Stock Exchange (ASE) in 1996. There was no trading history of the company at ASE.
 - b) On November 30, 2013, *Dhyana* made a preferential allotment of 64,25,000 equity shares at the price of ₹ 10 per share to 49 entities.
 - c) The equity shares allotted on preferential basis to the aforesaid allottees were locked-in for a period of one year.
 - d) On June 13, 2014, *Dhyana* got itself listed on BSE from ASE and the scrip started trading from that day.
 - e) Between June 13, 2014 and November 28, 2014, ("Patch 1") the price of the scrip opened at ₹ 251 and closed at ₹ 355. During this period, the scrip was traded with an average volume of 5,277 shares per day and total volume of 5,75,235 shares in 109 trading days.

- f) Thereafter, between December 01, 2014 and July 27, 2015 ("Patch 2"), the price of the scrip opened at ₹ 351 and closed at ₹ 405.7. During this period, the scrip was traded with an average volume of 24,376 shares per day and total volume of 39,97,754 shares in 164 trading days and it is alleged that entities connected, directly or indirectly, with *Dhyana*, started providing hugely profitable exit to the preferential allottees.
- g) During Patch 2, out of the 49 preferential allottees, 39 allottees exited and sold 31,67,410 shares and have in aggregate made profit of ₹ 107.43 crores. Of the shares sold by preferential allottees, 18,22,678 shares representing 57.54% shares were bought by "*Dhyana Group*" consisting of 31 entities (as explained in para 20 table 3 of the interim order dated June 1, 2016).
- h) Certain private corporate bodies connected to each other and to *Dhyana* were observed to have given funds to exit providers. Some of these exit providers immediately transferred the funds to trading members for purchase of shares of *Dhyana*.
- i) On 27th July 2015, several SMS messages were circulated among investing public to the effect of inducing them to buy the shares of *Dhyana* specially highlighting it to be a "Jackpot buy", so as to induce the investors to buy the securities.
- j) Driven by the SMS tips, investors purchased 3,18,971 shares from the net sellers (referred in para 18 of the interim order) on July 27, 2015 at price ranging from ₹ 396-₹ 406. The 29 Net sellers who were part of *Dhyana group* sold 2,62,682 shares on July 27, 2015 representing 82.35% of total shares bought by the investors in the influence of SMSs. There were 6 Preferential Allottees who sold 53,289 shares on July 27, 2015 and made profit of ₹21.65 crores.

3. The allegations against Noticees as mentioned in the *interim order* are that, the acts and omissions of Noticees are '*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) and 4(1), 4(2)(a), (b), (c) (g) and (r) thereof and section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992. These allegations have been made, *inter alia*, on the basis of following:

- a) The traded volume and price of the scrip increased substantially only after *Dhyana group* and *preferential allottees* started trading in the scrip. *Dhyana group* entities were trading in the scrip above the Last Traded price (LTP) and their trades resulted in artificial increase in price.
 - b) *Dhyana group entities* and *preferential allottees* traded amongst themselves and in the process, used securities market system to artificially increase the volume and the price of the scrip for making illegal gains and to convert ill-gotten gains into genuine ones.
 - c) The net sellers who sold on July 27, 2015, were either preferential allottees themselves or had purchased shares of preferential allottees at a high price during the examination period; they may have availed the services of some unidentified entities to send the SMS and thereafter dumped the shares of Dhyana so acquired on unsuspecting investors by employing a scheme of sending fake SMS inducing them to buy the scrip.
4. Copies of the ex-parte ad-interim order were sent to all the noticees. However the copy of the order sent by courier, to Purvesh Nareshbhai Chauhan (Non-executive director), returned undelivered. Finally, the copy of the ex-parte ad-interim order was served by affixture on November 26, 2016 at the last known address of the Purvesh Nareshbhai Chauhan, after the service through the broker was unsuccessful. Purvesh Nareshbhai Chauhan failed to reply to the ex-parte ad-interim order or seek any personal hearing.

5. Pursuant to the *interim order*, many entities filed their replies in the matter. Information/documents which were relied upon by SEBI for passing the *interim order* were also provided to entities who had requested for the same. Meanwhile, some of the entities along with their replies in the matter sought opportunity of personal hearing. They were granted opportunity of personal hearing on January 05, 2017, February 01, 2017, March 02, 2017 & March 29, 2017. Few of the Noticees also filed additional written submissions after availing the personal hearings. Some of the noticees did not appear for the hearing even after being granted several opportunities of personal hearing.
6. While the proceedings pursuant to the *interim order dated* June 01, 2016 were going on, two separate appeals challenging the *interim order* and seeking reliefs/interim reliefs were filed before the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT"), one by Shri Jayprakash Maneklal Patel and the other by Manharbhai Vallabhbhai Vaghani & ors. (i.e. Sanjay Bhikhabhai Vaghani, Mahesh Vallabhbhai Vaghani and Haresh Bhikhabhai Vaghani). The said appeals were disposed of by SAT vide order dated October 4, 2016 & September 30, 2016 respectively, directing the appellants to file an application to SEBI. Accordingly, the appellants sought permission to sell the shares held by them in their demat accounts and mutual fund units held by them either singly or jointly and to deposit the sale proceeds in an interest bearing escrow account. SEBI vide order dated October 21, 2016, provided certain reliefs to aforesaid appellants.
7. SEBI, vide *interim order* dated June 01 2016 debarred 76 entities and upon granting hearing or receipt of replies, passed confirmatory orders in respect of 23 entities. Simultaneously *ex-parte confirmatory order* dated August 24, 2016 & October 10, 2016 was passed against 32 entities (21 entities on October 10, 2016 & 11 entities on August 24, 2016), since they did not respond to SEBI pursuant to the aforesaid *interim order*. In the said *ex-parte* confirmatory order the name of Ms. Shaluben Nikeshbhai Shah was also inadvertently mentioned though she had responded. In

the meanwhile, in another appeal filed by Mr. Suresh Chindi Gowda, against the confirmatory order dated August 24, 2016, the Hon'ble SAT remanded the same with the direction to pass fresh order after hearing the appellant as expeditiously as possible. Accordingly, Ms. Shaluben Nikeshbhai Shah and Mr. Suresh Chindi Gowda were granted an opportunity of personal hearing on March 2, 2017 and March 29, 2017 respectively. The present order covers the remaining 21 {i.e. 76-55 (23 on merits and 32 ex-parte against whom confirmatory orders have been passed)} entities and Ms. Shaluben Nikeshbhai Shah and Mr. Suresh Chindi Gowda. Thus proceedings against 23 Noticees are being dealt with in this order.

8. Majority of entities have already been heard and their replies are similar/identical. Some of the entities have sought adjournment/documents solely with a view to delay the proceedings. Certain other entities have not sent any reply / appeared or sought any relief. The proceedings are at a stage now, that after about a year from the date of interim order, the passing of the confirmatory order cannot be delayed / deferred any further. Thus, I am looking at the matter holistically and as a group matter. I am considering passing of orders with respect to all the remaining entities irrespective of whether they have responded or not. I am taking into consideration the replies and submissions of entities who have responded and the materials available on records with respect to other entities for passing this order.
9. In the case of Noticees who have submitted similar /identical replies, common issues have been identified and grouped together for the sake of brevity. In addition, once a common ground / contention is raised by one of the noticees, it is not repeated for other noticees. The replies of the Noticees are also summarized below:

I: Company:

1. Dhyana Finstock Limited (Represented by Keval N. Ponkiya, C.A.):

- a. The name of the Company is not mentioned in the list of persons/entities under the operative part of the order and hence it is inferred that they do not form part of the Dhyana Group. The interim order against them is vague, illegal, perverse, non-speaking as it does not mention specific charges against them.
- b. The interim order is passed without granting them an opportunity of personal hearing and is in gross violation of natural justice.
- c. There is no urgency in passing the Interim order without granting an opportunity to file written submissions and a hearing. Interim order passed in June 2016 smacks of misuse of authority.
- d. They deny that they were aware of, or part of, or involved in the alleged acts and commissions of funds transfers of Dhyana group entities/exit providers/preferential allottees.
- e. They have submitted that other than making preferential allotment, listing their shares on BSE and having few/common directors with four private limited companies forming part of Dhyana group there is not a single finding against them with respect to the connection/relation with the Dhyana group and other allottees or their acts and omissions.
- f. They were neither aware, nor involved, nor participated, nor had means to the purported SMS or alleged price manipulation /fraud. Further, they don't have any control or any means to verify the identity, existence and commissions of Mr. Ravi Makwana, ShubhInvestments, Adskaro (an unregistered telemarketer) and Oppulent Investment Adviser Private Limited. They are not aware or used or controlled Sender

Id "StAxis", www.bsebull, website GoDaddy.com LLC, www.bsebull.in and www.stocktips.in.

- g. Just because Dhyana shared few/ common directors/promoters with the four private limited companies being, Mainak Com trade Pvt Ltd., Parin Infrastructure Pvt Ltd., Pranatpal Tradelinks Pvt. Ltd. and Taru Pallav Projects Pvt. Ltd. does not establish the allegation that Dhyana was in any way related/ connected or was aware of or involved in or had control or influence on their acts and omissions to the extent that Dhyana together entered into fund transfers and manipulative/fraudulent activities as alleged.
- h. The price volume movement was totally based on investor's perception, sentiments and decisions and they cannot be held responsible for the same.
- i. The interim order has not defined or explained what is meant by "supported by its fundamental or any other genuine factor". The Company had earned profits prior to the investigation period and during the investigation had made preferential allotment with promising prospects.
- j. The company further submitted and clarified that the company has mistakenly shown income from its regular business in income from other sources for the FY 2014-15. Subsequently, the company has shown this in its regular income of FY 2014-15 and such rectified results are also filed with BSE.
- k. Their management took reference from and assistance of various professionals who were engaged with the company in selecting and approaching the investors.
- l. They have distributed funds to entities with sound financial position and stable structure and therefore did not find it necessary to execute the Loan agreement.
- m. The registered office of the Company was under renovation, when BSE conducted a surprise inspection. On account of the renovation at the registered office, some work

was shifted to the corporate office at 5th floor of the company for the sake of convenience. It was also mentioned in the SCN that on the display board at the entrance of the premises that the company has corporate office on the 5th floor of the same premises at Room No.24 so that the company could be contacted. They therefore deny the observation that from the visit to the aforementioned sites it was revealed that company exists at the corporate office. However, they could not provide any documents to show that any operation or activities are carried out from said office.

- n. Their intention for raising the fund through special resolution is very clear and from all the other documentary evidences whereby it is proved that they wanted a fund for the development of business and earning an income.
- o. They were unable to provide certain loan agreements with respect to utilization of funds from preferential allotments as the loan agreements were never executed by them.
- p. They deny that they did not cooperate with BSE in respect of measures required for revocation of its suspension or that their attitude was lackadaisical while seeking information in respect of preferential allotment. They have communicated with BSE via e-mail and submitted various documents sought by them.
- q. Mr. Gautamsingh Zala, carried out some fund transactions with Mainak Com trade limited (both entities forming part of Dhyana group). This by itself, does not go to establish that he was related to them. They deny any connection/relation with Niravkumar Surendrakumar Shah and Palakben Niravkumar Shah.
- r. They were not aware of the alleged modus operandi employed by other persons referred to in the order. The reasons to penalize them for the trades of shareholders of the company itself are flawed and remain unsubstantiated.

- s. The findings contained in the Interim order against them are erroneous and based on mere presumptions and assumptions as no documentary evidence has been produced.
- t. The company further submitted that the company itself has not traded at all in the market because it has no demat account at all to trade or hold the shares or securities.
- u. They have prayed that the proceedings against them be dropped and the interim order against them be set aside.

II: Promoters & Directors

1. Priyanka Nrupesh Tripathi (Represented by Ms. Khushbu Trivedi, Practicing Company Secretary):

- a. She denied that she was aware of, or part of, or involved in the alleged acts and commissions of funds transfers of Dhyana group entities/exit providers/preferential allottees.
- b. Being an Independent and non-executive director of the company, when she came to know about the market movement and freezing of pay out of the Dhyana on 27.07.2015, she asked the company regarding the same and in response the company has provided her below facts:
 - The management of the company is not at all involved in such activities of sale/purchase of the equity shares of the company,
 - Company has always intimated the stock exchange whenever promoter / directors of the company had purchased or sold off the equity in the past.
 - Company is not aware who has done the manipulation of the share price. The company continuously intimated the exchange by way of its corporate action the important and necessary news and actions in compliance of the listing agreement.

- Company also ensures that company will intimate the exchange on regular basis about any of the sensitive news / information which affect the shareholders and public at large.
 - Regarding emails, SMS and calls, the same is carried out by third party not connected with the company, approaching public at large and asking public to purchase, sale or to deal / indulge in the company's equity shares to make the profit / earn money / take benefit and about the same company is totally unaware.
- c. Her name is not shown under any allottees/ exit route provider/ SMS scam player and/or Dhyana group as mentioned in order dated 01.06.2016 which clearly indicates that she is not a connected person on whom such harsh steps are required.
- d. She confirmed that she has no demat account and not holding any shares of Dhyana directly and/or indirectly
- e. She was approached by the Promoter & Director of the company for directorship and was appointed as non-executive and independent director on March 31, 2015 i.e. not only post the preferential allotment but also post the lock in period, just few months prior to the end of the investigation period.
- f. She was not involved in the day to day management of the company and have very little role in Dhyana. She has resigned from the company on 10 November 2016.
- g. In interim order, her name is there only in point no. 60 being the director of the company and the point itself is an explanatory noting that "the directors being in control of the day to day affairs of the company had the knowledge of its acts and omissions." However she was the independent and non- executive director of the company and not involved in the day to day affairs of the company.
- h. Under the aforesaid circumstances, she submitted that:
- The Impugned Order dated 01.06.2016 passed against her be set aside.

- That in alternative, she may be allowed to deal in scrips/ sell scrips other than Dhyana Finstock Limited.
- Such further and other reliefs as deemed fit in the nature and the circumstances of the case.

2. Harshad Kumar Patel (Represented by Ms. Khushbu Trivedi, Practicing Company Secretary)

- a) He denied that he was aware of, or part of, or involved in the alleged acts and commissions of funds transfers of Dhyana group entities/exit providers/preferential allottees.
- b) He stated that during the examination period, being a non executive independent director, he was neither involved nor in control of the day to day affairs of Dhyana.
- c) Further he has not carried out any transaction in the company and there is no change in his shareholding since long. This action adversely affects his reputation and livelihood of his family members as well. He has an objection against the order which has resulted in injustice.
- d) He was neither aware, nor involved, nor participated, nor had means to the purported SMS or alleged price manipulation /fraud. He has neither circulated nor was aware, nor involved, nor participated in circulation of several fraudulent SMS among investing public with the effect of inducing them to buy the shares of Dhyana, nor has influenced trading decisions of investors in any way.

3. Rajeshkumar Theophilbhai Christie (Represented by Keval N. Ponkiya, C.A.):

- a) His name is not there anywhere in the list of 32 net sellers who sold on July 27, 2015 as he has not traded a single share on that particular day. Further, whenever he has traded a single share of *Dhyana*, he has submitted the necessary disclosures for the same.

- b) He further submitted that he is in the management of the company and busy in managing the company and its affairs for the growth and development of the company itself.
- c) He further submitted that his name is not mentioned anywhere in the list of connected or related entities forming part of Dhyana Group with the company except as a Share Holder-cum-Director of. M/s. Parin Infrastructure Private Limited (PIPL).
- d) He also submitted that he was appointed on the board of the PIPL as a director from 14th June, 2012 to 1st October, 2014, holding just 5000 shares of that company. He was never in the management of this company at all. He has resigned from the PIPL with effect from 1st October, 2014.
- e) He has also resigned from that company on 1st October, 2014.

4. Ashokbhai G Jaratal & Mayaben Ashokbhai Jaratal (Did not appear in the Personal Hearing):

The entities have not done any trading of shares in the company and they are holding the shares of the company since long. They have not done any profit making transactions.

5. Shaluben Nikeshbhai Shah (Represented by Keval N. Ponkiya, C.A.) :

- a. She denies that she was aware of, or part of, or involved in the alleged acts and commissions of funds transfers of Dhyana group entities/exit providers/preferential allottees.
- b. She was neither aware, nor involved, nor participated, nor had means to the purported SMS or alleged price manipulation /fraud. She has neither circulated nor was aware, nor involved, nor participated in circulation of several fraudulent SMS among investing public with the effect of inducing them to buy the shares of Dhyana, nor has influenced trading decisions of investors in any way.

- c. Her name is not mentioned anywhere in the list of net sellers on 27th July, 2015 because he has not traded with a single number of shares. Therefore, she has no connection with the said mentioned entities that are connected or related with the company.
- d. She further submitted that the Hon'ble member of SEBI failed to prove on the record that she has connection in terms of finance from the connected or related entities of Dhyana Group.
- e. She further submitted that being promoter of the company she was never being in the management of the company while other promoters are named as promoter and also designated as Executive and Non-executive Directors of the company.
- f. It appears that merely because she is the promoter of the company, it is wrongly assumed that in a private placement of securities in terms of preferential allotment to selected group of persons or entities, the issuer and their promoters/directors have connection on account of acquaintance and familiarity, they all are connected and having understanding, arrangement and having a purpose of committing fraud and to misuse the stock exchange system to artificially increase volume and price of the scrip for making illegal gain and convert it into genuine one.
- g. She submit that she was never a part of management of the company or had any position or designation with regards to financial matter or any other matter relevant with this preferential allotment.
- h. She has never traded in a single share of *Dhyana* and she is holding only 30,000 shares of the company.

6. Aneelkumar Albertbhai Patel & Priti Jayakarbhahi Christian (Did not appear in the Personal Hearing):

- a) They submitted that they have been restrained from doing any transaction in securities market without providing any evidence.
- b) They have not made any transaction in the company and their shareholding has not changed since long.
- c) This order adversely affected their reputation in the society.
- d) They requested to take back all the allegations made against them.

III: Dhyana Group:

1. Harshad Baldevbhai Patel & Shailesh Baldevbhai Patel (Represented by Ms Akansha Jain, Practicing Company Secretary & Mr. Amit Shah):

- a. They deny all the allegations levied against them in the above mentioned order. They are HNI Investors and have a trading history of 7-8 years.
- b. The entities had also submitted that the power to issue directions under section 11B is a drastic power. The direction under this section had a great consequence on their reputation and livelihood. There was no need, necessity or rational in the present *interim order* for use of such severe and drastic power against them.
- c. They have neither heard anything from BSE/SEBI for 11 months from the said notice nor was asked to provide any information/documents required by them for the investigation.
- d. The investment made by them in DFL in compliance of ICDR guidelines as well as the Companies Act. All their investment decisions in DFL were taken on the advice of Shri. Vishaalbhai Mistry. They have invested in DFL because shares were offered at a face value of

₹. 10 on a firm allotment basis and allotment was made in compliance of SEBI ICDR Guidelines and the Companies Act.

- e. The reason provided in the order debarring them is that, they are Preferential Allottees and they have disinvested their investment after holding the same for long period. It can be safely concluded that, their act of disinvestment of their shares allotted to them by preferential allotment is the reason for their debarment. In absence of any evidence of manipulation or fraudulent practice, the act of SEBI is not justifiable and it seems it is an error on part of SEBI to generalize their roles with other so called wrong doers.
- f. SEBI finds the preferential allotment was made as a part of dubious scheme then why only 39 allottees out of 49 allottees were only debarred. SEBI feels that the acquisition of shares through preferential allotment is genuine but selling the shares allotted through preferential allotment is wrongful act. In that case SEBI should have conclusive evidence to prove that their sale trades are manipulative before passing the order. Here SEBI did not raise any question on their sale transaction.
- g. Their trades are independent and they do not have any connection with the Company, Promoter, Directors, so called Dhyana Group; Exit provider, Manipulator, etc. Even interim order confirms that they are not connected with any of these entities.
- h. They held the shares for 16-20 months before selling the same and still holding shares of DFL, more than 3 years after the investment. On 27/07/2015 they sold 1750 shares each and payout of the same were withheld. They have received the payout of shares sold before 27/07/2015 as SEBI finds all their trades except shares sold on 27/07/2015 as genuine.
- i. The payout of funds received from the sale proceedings of DFL is utilized to fulfill their business and other commitments.

- j. They have no commonality viz. common address, common phone number, email id, common introducer of whatsoever nature (except with their family members) has been attributed between them and the other alleged group entities.
- k. They have sold the shares at the BSE on BOLT system where identity of the counterparty buyer is not known.
- l. The payout for the trade done on July 27, 2015 was withheld and SEBI took almost 11 months in passing interim order, though all the input of interim order was readily available with SEBI on 11th August 2015, when BSE submitted its first investigating report to SEBI. SEBI took unreasonable time to pass the interim order. They also quoted some cases in which SEBI passed order within two weeks. The delay in passing the interim order is a violation of natural justice.
- m. SEBI has raised an allegation of LTCG in its order. SEBI does not have purview of investigating the same. They have not misused the Stock Exchange platform to generate artificial gain. Their capital gain is genuine and bonafide.
- n. They have received Short term loan from Mainak Comtrade Pvt Ltd. which was duly returned. SEBI has wrongly interpreted this transaction to prove their connection with entire Dhyana Group. Even if, they are indirectly connected to Mainak Comtrade Pvt Ltd. it does not prove that they are part of any manipulation scheme of which Mainak Comtrade Pvt Ltd. is alleged to be part of.
- o. The investigation began with annulment of trades but the order permitted the release of securities. The trades can never be annulled which also proves that the complaints were not genuine. Further, nowhere in the entire order any reasoning is given for the release of securities. But surprisingly order is passed to release the securities to buyers for the trades executed on 27/07/2015. It seems that the outcome was pre-decided and without giving any justification or even explaining the matter, in one line SEBI directed the release of the

securities. Also this act of SEBI proves that the trades of 27/07/2015 are genuine. If SEBI thinks that they have made any dubious plan to defraud the investors then, SEBI would have annulled the trades of 27/07/2015, instead of releasing the securities.

- p. SMS scam is not under the purview of SEBI and the same is being investigated by Cyber Crime Cell and till date there is no progress.
- q. There is no evidence which establishes any connection between them and SMS sender directly or indirectly in SEBI interim Order. Even after 18 months from July 27, 2015, SEBI does not have single evidence establishing their connection/involvement with scam related to SMS and still as an interim measure their payout continues to be withheld and they are continued to be debarred.
- r. LTCG is exempt under section 10 of Income Tax Act from taxation. The Laws & Regulations of Income Tax are framed in such a way to encourage long term capital gain and to boost the economy of India. LTCG comes under the purview of Income tax Department and not SEBI. SEBI has not acknowledged that any investigation is going on at their end regarding LTCG. Even going through certain paragraphs of the interim order, it seems that SEBI is depending on other investigating agencies such as Income Tax Department for investigation in the matter of LTCG. If that is the situation then it is not SEBI's case. So till pendency of these cases with relevant agencies, SEBI has no right to withhold their payout and debar from trading.
- s. It is worth noting that even after a span of 18 months SEBI is not passing Final order and not releasing the payment. Due to improper and delayed investigation by SEBI innocent investors like them are suffering that too without evidences being provided by SEBI.
- t. The order mentions that notice was issued on receipt of more than 100 complaints which is incorrect statement as merely 22 complaints were BSE/SEBI till 4:00 PM on 28/07/2015. SEBI did not check the authenticity of Investors neither done any due diligence of complaints

before withholding the payout by BSE notice and even before passing interim order on 1st June 2016.

- u. Equilibrium price on very effective first day of trading i.e. on 13th June 2014 was established as ₹. 251/-. As per the set norms of Exchange, if SEBI found something abnormal, SEBI should have intervened in that case and taken some precautionary measures. They have no role in establishing equilibrium Price of ₹. 251/-. If SEBI had problem with the rate of the scrip, then why no action was not taken by BSE /SEBI when the price of the scrip was rising. The abnormal price rise was due to failure of surveillance mechanism at Exchange and the Board.
- v. One Mr. Akshay Shetty had demanded for annulment/cancellation of trade in his report. The noticees were surprised that he could prepare a report with lot many facts and investigation in a very short span of might be one day. But SEBI could not do their investigation in the same matter since last 18 months. SEBI's own inefficiency is proving that there is no fruitful investigation going on at SEBI.
- w. If something wrong was done by company / related entity / connected group, the company should have been suspended immediately but everyone managed to sell the shares even after 27th July, 2015.
- x. In other cases of Dhyana Finstock Ltd., SEBI has provided interim relief under the formula of 25:75. They totally disagree with the said interim relief formula as it promotes only inequality. As noticees having huge portfolio will suffer adversely and notices with nil or small portfolio will be benefited, apart from that their case is not similar to other 1200 entities in similar matters as their payout of fund is not withheld for last 18 months.

They request SEBI to release their payout immediately and also set aside the debarment order and they be allowed to trade freely in the market.

2. Birju Pravinchandra Sanghvi (Represented by Jatin Kapadia, Company Secretary):

- a. He stated that by profession, he is a contractor. In the mid of year 2014, he came into contact Mr. Hitesh Parikh and Mr. Yohesh Mistry (Collectively known as Mainak Comtrade Pvt Ltd) for reason of renovation of two offices through one of his client.
- b. Due to his physical illness since 2014, he could not pursue physical work. Based on advice of Mr. Hitesh Parikh and Mr. Yohesh Mistry he started sub-letting work. On demanding advance for renovation of office of Mr. Hitesh Parikh and Mr. Yohesh Mistry, transferred ₹ 40 Lacs on 13th January, 2015. This is just a co-incidence that, on that day his brokerage liability was in due. Further, that on 26th December, 2016, he had returned back ₹ 33 Lacs to Mr. Hitesh Parikh and Mr. Yogesh Parikh as his work for renovation was over and Mr. Hitesh was not willing to renovate the other office.
- c. Due to physical illness and need of fund, he was in exigency to start new venture having more office work compared to field work. Moreover, at the time of meeting with Mr. Hitesh Parikh and Mr. Yogesh Parikh, they convinced him to believe as they are expert into secondary share market trading. Further, they suggested him to invest into M/s. Dhyana Finstock Limited.
- d. He took a risk for buying ₹ 40 Lacs valued shares as he believed that Mr. Hitesh Parikh and Mr. Yogesh Parikh made payment on or before 13th January, 2015. Further, initially he invested amount in the share through his own fund/finance only. As per his bank Statement, he received finance from Chetan Panchal in form of unsecured loan amount to ₹ 10 Lacs on 20th December, 2014 and he received outstanding receivable with UJJAVAL Corporation on 22nd December, 2014 amounting to ₹ 10 Lacs out of which he bought shares. Moreover, on 2nd March, 2015, he received fund from A. K. Engineering as old due receivable that he also invested in shares.

- e. There is no connection established between him and company/allottees. Further, it is nowhere shown in the order that the company or allottee has given him any money to invest in to capital market.
- f. He denied having misused the stock exchange system, as wrongly alleged, to generate fictitious LTCG where buyers were lured to buy in the scrip to give exit to few shareholders/ preferential allottees. He further stated that he was neither aware of nor involved in, nor participated in, nor had any control or means to verify the said acts and omissions of other entities.
- g. He is a genuine investor and has been dealing in stock market for past few years.
- h. He has traded on the floor of the Exchange in a blind and transparent trading mechanism. It was and is impossible for him to know the counterparties to his trades.
- i. The fund transaction between Mainak Comtrade Pvt. Ltd and him were legitimate and genuine transactions in normal course of business. He was neither aware of nor has means to discover the fund transaction between Mainak Comtrade Pvt. Ltd. and other entities as alleged vide the SCN or the fact that Mainak Comtrade Pvt. Ltd formed part of Dhyana Group.
- j. He is neither aware, nor involved, nor participated, nor had means to the purported SMS or alleged price manipulation /fraud. He has neither circulated nor is aware, nor involved, nor participated in circulation of several fraudulent SMS among investing public with the effect of inducing them to buy the shares of Dhyana, nor has influenced trading decisions of investors in any way.
- k. He denied that he was aware of, or part of, or involved in the alleged acts and commissions of fund transfers of the Dhyana group entities/exit providers/ preferential allottees. He further state that just because he had fund transactions with Mainak Comtrade Private Ltd. and Dhyana shared few/ common directors/promoters with the four private limited companies being, Mainak Comtrade Pvt Ltd., Parin Infrastructure Pvt Ltd., Pranatpal

Tradelinks Pvt. Ltd. and Taru Pallav Projects Pvt. Ltd. does not establish the allegation that he was in any way related/ connected or was aware of or involved in or had control or influence on their acts and omissions to the extent that he together entered into fund transfers and manipulative/fraudulent activities.

IV: Preferential Allottees:

1. Sanjay Bhikhabhai Vaghani, Manharbhai Vallabhbhai Vaghani, Mahesh Vallabhbhai Vaghani & Haresh Bhikhabhai Vaghani (Represented by Mr. Sanjay Bhikabhai Vaghani & Ms. Poonam Gadkari, Advocate Juris Matrix Advocates & Solicitors)

- a. The entities denied all allegations made in the *interim order*.
- b. They were neither aware of, nor connected with, nor involved in, nor participated in nor had the means to know and verify the alleged acts and omission of entities of the purported Dhyana Group and (other) allottees or their alleged dealings or acts of sending any spam unauthorized SMS as alleged.
- c. In the said interim order dated 01.06.2016, the fact that SEBI has chosen to release the securities to the buyers for the trades executed on 27.07. 2015 itself confirms that SEBI has failed to take a linear view in the matter. SEBI has thus validated one part of the contract and released the securities to the buyers and has in the process ignored that our contractual obligation had ceased much prior in time on sale of our shares and we had no role at all to play for the trades of 27.07. 2015. That nothing is more contradictory to the findings and the outcome in the said interim order dated 01.06.2016.
- d. There is neither any observation as against them nor any evidence has been produced which establishes the connection between them and purported Dhyana Group and (other) allottees in the impugned order. On the contrary they deny the existence of the so called

"Dhyana group". Assuming without admitting that there is a "Dhyana group", they deny that they formed a part of the same.

- e. They were neither aware, nor involved, nor participated, nor had means to the purported SMS or alleged price manipulation /fraud. They state that they have neither circulated nor were aware, nor involved, nor participated in circulation of several fraudulent SMS among investing public with the effect of inducing them to buy the shares of Dhyana nor have they influenced trading decisions of investors in any way.
- f. They have invested from their own funds. Shri. Mahesh Vallabhbhai Vaghani, Shri. Haresh Bhikabhai Vaghani and Shri. Sanjay Bhikabhai Vaghani have invested in preferential allotment of Dhyana by investing funds received from Roomy Exports being their partnership firm. Whereas Shri. Manharbhai Vallabhai Vaghani has borrowed funds from his father Shri. Vallabh Vaghani for investing in the said preferential allotment.
- g. They are genuine investors. They had made investment in *Dhyana* considering its prospects. Pursuant thereto, as required, they held the shares during the lock in period of one year. Thereafter upon expiry of the lock in period, they have sold their shares when they saw good price in the market and have acted as a prudent investor. The rationale behind every investment is to earn profit. The Long Term Capital gain is an incentive provided to the investors to attract investments.
- h. Shri. Mahesh Vallabhbhai Vaghani Shri. Haresh Bhikabhai Vaghani and Shri. Sanjay Bhikabhai Vaghani transferred the proceeds realized on selling the said shares to the said Roomy Exports. The said proceeds were utilized to meet financial requirements of Roomy Exports in normal course of business. Shri. Manhar Vallabhbhai Vaghani had transferred the proceeds realized on selling the said shares to Shri. Vallabh Vaghani.
- i. They submit that as far as they are concerned they have not misused the stock exchange system, as wrongly alleged, to generate fictitious LTCG where buyers were lured to buy

in the scrip to give exit to few shareholders/ preferential allottees. They further state that they were neither aware of nor involved in, nor participated in, nor had any control or means to verify the said acts and omissions of other entities.

- j. They have sold the shares much earlier than 27th July 2015 and have not executed even a single trade on 27th July 2015 on BSE.
- k. They have been included merely because they were allotted shares on preferential basis and after expiry of lock in period, and in the process earned profits, it is assumed that they were party to some fraud and acting in concert with Dhyana Group and (other) allottees and have misused 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.
- l. SEBI has erred in inferring that they had prior understanding, arrangement and purpose with other preferential allottees, Dhyana and its promoters /directors merely on assumption that in a preferential offer of shares, 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. They deny the said allegations and further SEBI has failed to establish any connection or relation but has based the conclusion on mere presumption of proximity.
- m. That several factors go in taking an investment decision. A person may know some key managerial or executive person in the company or financial advisors, and may invest in the Company trusting his credentials. They have taken advice of Chartered Accountant, namely Mr. Kamlesh Shah and invested in the scrip of Dhyana. They regularly sought his advice while making investments as they had trust in his judgment.
- n. They state that their trust on Chartered Accountant Mr. Kamlesh Shah was well founded and in any event otherwise too they are incapable of evaluating on account of their educational background.

- o. That other than them being amongst the preferential allottees there is not a single finding as against them with respect to the connection/ relation with the Dhyana Group and other allottees or their acts and omissions. Similarly there is no finding against them with respect to the alleged unauthorised circulations of SMS and spam message or fund flow amongst the Dhyana Group and other allottees.

2. Kantilal Amulkhdas Vohera & Kantilal Amulkhdas Vohera (HUF) (Represented by Ms. Poonam Gadkari, Advocate Juris Matrix Advocates & Solicitors):

- a. The entities denied all allegations made in the order.
- b. They have submitted that they had acquired 100,000 shares in the company by way of preferential allotment from their own funds. Out these they had sold some shares and all transactions were carried out before 27 July 2015 i.e. the day when SMS scam took place.
- c. Further, since they are still holding shares of the company, they cannot be blamed for price volume manipulation.
- d. They submit that they were neither aware of, nor connected with, nor involved in, nor participated in nor had the means to know and verify the alleged acts and omission of entities of the purported Dhyana Group and (other) allottees or their alleged dealings or acts of sending any spam unauthorized SMS as alleged.
- e. SEBI has erred in inferring that they had prior understanding, arrangement and purpose with other preferential allottees, Dhyana and its promoters /directors merely on assumption that in a preferential offer of shares, 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. They deny the said allegations and further SEBI has failed to establish any connection or relation but has based the conclusion on mere presumption of proximity.

- f. That other than they being amongst the preferential allottees there is not a single finding as against them with respect the connection/ relation with the Dhyana Group and other allottees or their acts and omissions. Similarly there is no finding against them with respect to the alleged unauthorised circulations of SMS and spam message or fund flow amongst the Dhyana Group and other allottees
- g. They deny that their acts and omissions were ever in violation of any of the sections of SEBI Act, 1992 or were fraudulent as defined under Regulation 2(1) (c) of SEBI (PFUTP) Regulations, 2003 or in contravention of the provisions of Regulations 3(a), (b), (c) and (d) and 4(1) , 4(2) (a), (b), (e), (g) and (r) thereof and section 12A(a), (b) and (c) of SEBI Act, 1992.
- h. They had not acted in concert with the alleged group of entities for creating false market or misleading appearance of trading in the market. Their transactions are genuine and were not done with an intention to inflate or cause fluctuation in the market price of the securities.
- i. The interim order therefore is based on mere incorrect assumptions, conjectures and surmises and non reliance on material and substantial information is therefore liable to be set aside as against them.

3. Jayprakash Maneklal Patel (Represented by Mr. Paras Parekh, Advocate J Sagar Associates):

- a. The entity submits that he has been investing in the securities market since the year 2002 and has been conducting himself since over 10 years without any allegation of any wrongdoing. He has over the years invested his savings in various securities including blue chip companies and scrips in other categories.

- b. The investment in the shares of DFL was the first time that he invested in the preferential allotment of listed scrip. He at the relevant time was informed about the scrip of DFL and that it was a potentially viable investment option. After consulting with relevant advisors he decided to invest in the preferential allotment of DFL.
- c. He was made aware of an opportunity to invest in a preferential allotment of Dhyana shares around November 2013. He with professional consultations, decided to invest a sum of Rs 10,00,000 in a private placement by way of preferential allotment of Dhyana.
- d. The fundamental error in the Impugned Order is that it proceeds on the basis that merely because he has invested in the preferential allotment of Dhyana, he is alleged to have acted in concert with the promoters of Dhyana and others who allegedly manipulated the price of the shares of Dhyana. It is submitted that this is an over-simplistic approach without any legal basis leading to the Impugned Order being vitiated.
- e. Investments in preferential allotment of a listed company do not indicate connection or connivance with the promoters of the company. No other connection or connivance has been shown between him and the promoters etc. of Dhyana. Further, no specific explanation of his role in the alleged fraud has been set out anywhere in the Impugned Order. The only observation made regarding him is that he was an allottee in the preferential allotment by Dhyana and that he subsequently sold these shares.
- f. He further submitted that for a serious charge of price manipulation, there ought to be circumstances including for instance fund transfer or common address or strong connection to show connivance. In the present case, a financial investment in a listed company in preferential allotment is alleged to be the only basis of such connivance. He does not have any common address, telephone, mail address, bank dealings or off market dealings with any persons named in the ex-parte Order or otherwise, nor have any shareholding in the promoter related entities or the exit providers as stated in the Ex Parte

Order. Therefore, it is not correct to allege that he is part of any group having a connection as is done by the Ex Parte Order.

- g. There is no cogent evidence or circumstance to level the allegations of manipulation against him and to deny him his constitutional right to trade.
- h. It is evident that neither the funds invested in the Dhyana shares, nor the funds received from the sale of shares have been alleged to have any links of any nature at all with any of the other entities against whom the Impugned Order contains references. The mere subscription of ₹ 10,00,000 in shares of Dhyana is the only transaction with any one at all covered in the Impugned Order. Therefore, it cannot be said that there was any complicity between him and the other parties alleged to have carried out any alleged scheme interdicted in the Impugned Order.
- i. He continued dealing in various other securities until the restraints contained in the Impugned Order came to be imposed. It was considered safe enough to invest in securities through this period and no allegation of any irregularity or wrong-doing has at all been alleged from such transactions. Therefore, no emergent situation or imminent danger was at all posed, and indeed, nothing of that nature is at all alleged in the Impugned Order, so as to affect an urgent intervention by way of restraints on him. In fact, the Impugned Order does not even purport to show how the wide restraint on any trading in any security is necessary or justified.
- j. The Impugned Order fails to specify or allege in any degree of exactitude, his role, if any, in the alleged fraud.
- k. The Impugned Order has been passed without appreciating that he is a regular investor in the securities market for many years, and has been trading without any stigma or wrong-doing attributed to him.

- l. He has over the years invested in various scrips including blue- chip companies and scrips in other categories. This demonstrates that he is a bonafide investor and there was nothing untoward in his investment in the scrip of Dhyana.
- m. He has been a non-executive and independent director on various reputed companies and has stepped down from them to avoid embarrassment to such companies. The Impugned Order is adversely affecting his reputation and standing in the market. The prohibition from buying in the securities market, directly or indirectly, in any manner whatsoever, till further directions, will also stultify his economic freedom to legitimately transact in securities. Such loss of reputation and intervention into his right and capacity to transact legitimately, with no justifiable link to the need for such restraints is not a reasonable restriction imposed on him.
- n. He has been trading in the securities market since the year 2002 and such unwarranted disruption and restraint on the constitutional right to transact in the market on the basis of an unending and ongoing investigation is incorrect.
- o. Further, pending the conclusion of investigation and the issuance of final order, SEBI vide its order has granted him certain interim reliefs.
- p. He submits that his entire portfolio consists of securities including mutual fund units, shares, bonds etc. The same is divided between various accounts wherein he is either a first holder or a joint-holder.
- q. He has provided list of securities held by him either singly or jointly by bifurcating into two parts. The same are frozen pursuant to the Ex Parte Order.
- r. The first part of securities presently valued at about ₹ 3.38 crores as on January 17, 2017 is more than the alleged profits of ₹ 3.22 crores allegedly made by him and the part 2 securities is valued at 5.90 crores.

- s. He proposed that securities listed in part 1 may continue to remain frozen until the conclusion of the proceedings without prejudice to his submissions. The remaining securities listed in part 2 may be allowed to be released for sale by him.
- t. He proposes to sell the securities as per the market condition without any fetter mentioned in part 2 for the purpose of securing the amount for his wife who is aged about 62 yrs. He also proposes to utilise part of the proceeds of such sale to meet the working capital requirement of his business.
- u. He requested that subject to the continuation of freezing of the securities listed in part 1, he may be allowed to freely trade the securities at part 2 and unfettered access to the utilisation of the proceeds thereof.
- v. He further submitted that the above reliefs are in any case in line with the requirements set out in the SEBI Order dated and in the interest of justice.
- w. He denied all allegations made against him in the Ex Parte Order and requested SEBI to expedite the investigation process and that a time frame be fixed to complete the investigation. Simultaneously, he further prays that interim relief sought above may kindly be granted.

4. Ashok Kumar Sethi (Did not appear in the Personal Hearing):

- a. The order has been issued/ passed without affording any opportunity to him and consequently it is completely in violation of the principles of natural justice. As per the settled principle of law, no man can be condemned un-heard.
- b. The power to issue directions under section 11 and section 11B of SEBI Act has to be exercised judiciously and it is all the more necessary in a case having adverse civil consequences as well as reputational adversity. Further, it is well settled that a discretionary power is not to be invoked arbitrarily devoid of justification, as has been done in the

matter under reference. An ex- parte ad interim order is justified if the circumstances justify the same. In the instant case, there was no such emergent situation or circumstance warranting such an ex-parte ad interim order.

- c. In the matter under reference, SEBI has not made out any fact as to what is the eminent danger caused by him or what is the urgency which require SEBI to exercise power under Section 11 and 11 B it is clear that there was no imminent danger or urgency so as to exercise powers under section 11 and 11(B) dispensing with the pre decisional hearing in gross violation of principles of natural justice.
- d. The directions under section 11 and 11(B) are issued for safeguarding the markets and are not for penalizing the persons and denying their legal rights, on the basis of assumptions and presumptions. The direction issued against him, at this juncture is neither preventive or remedial nor curative, but out and out penal.
- e. The directions passed against him are neither warranted nor urgent. Nothing has been brought on record to justify the directions inflicting irreparable damage upon him. Exercise of such an arbitrary power is unwarranted & unjustified. Not even a prima facie case has been made out to warrant the issuance of such an ad interim ex parte order.
- f. He submits that around October 2013, he was informed of a proposal to invest in the preferential allotment of equity shares made by Dhyana Finstock Limited. At the relevant time, he was given to understand, that Dhyana is a listed company and that it was seeking to raise funds by way of a preferential allotment of 64,25,000 shares at ₹ 10/- per share.
- g. Subsequently, after completion of requisite formalities, in terms of filling the application form, remitting the application amount to the Company etc, and obtaining of approval by the Company from its shareholders and stock exchanges, he was allotted 1,00,000 shares of Dhyana @ of Rs 10/- per share.

- h. He had paid consideration amount of Rs 10,00,000/- (Rupees Ten Lakh Rupees Only) towards subscription of 1,00,000 shares of Dhyana. The said amount was paid by him out of his own funds through the cheque drawn from his bank account.
- i. Thereafter he received a letter from Dhyana Finstock Ltd in December, 2013. Therefore said equity shares have been credited in his Demat account on 31.1.14.
- j. The application for allotment has been accepted by the Company and thereafter, the shares have been allotted to him, which is strictly in accordance with law and is not prohibited under any statutory provisions of law. The amount has been paid by him through cheque. He is not at all involved in increasing the share-prices on afore said shares.
- k. He submitted that the aforesaid preferential allotment of share was done by the company under the provisions of Sec. 81 (1-A) of the Companies Act, 1956, and the applications have been submitted by him as per Rules and regulations of the Stock Exchange.
- l. During the period from December 2014 to February, 2015 and April, 2015 to 25th May 2015, he sold 43,650 shares at the market price at which it was trading in the exchange. Significantly, there was nothing in the public domain about anything amiss in the scrip of Dhyana. Further, neither stock exchange nor SEBI had raised any grievance in public domain about the price rise or volume rise in the scrip.
- m. He submitted that no trading or sale has been by him on 27.7.15, which has been referred to by SEBI in the order, dated 1.6.16. Similarly, he submits that as referred by SEBI he is not at all a part of Dhyana Groups.
- n. The pay-out amounts received by him from the broker towards sale of shares of Dhyana, from time to time, were utilized by him for his own business and financial purpose and were not transferred, whether directly or indirectly to any of the entities as stated in the Order.

- o. He submitted that he was merely an investor who had invested in the shares of Dhyana pursuant to the said preferential allotment made by the Company in the facts and circumstances set out herein before. Further he does not have link/connection/nexus with Dhyana, its promoters/directors, save and except as a shareholder, by virtue of his preferential allotment. He submitted that he is not connected to other preferential allottees as set out in the Order, Persons/entities who had traded in the scrip during the examination period, Persons/entities who had circulated fraudulent SMS/ email among investing public with the effect of inducing them to buy the shares of Dhyana as alleged in the Order, Persons/entities referred to in the Order.
- p. He submitted that he had no role whatsoever to play in the trading done by various entities/ persons (as set out in the Order) in the scrip. He is not aware of and do not admit, that the price increased as a result of his selling the said shares. The said order does not contain any details/ evidence in support of allegation that as a result of his trading the price of the scrip has increased.
- q. He had sold the shares held by him on multiple dates as stated in the aforesaid paras. The sales were carried out by him through his broker on the screen based mechanism of the stock exchanges wherein it is not possible to know the counter party buyer or the counter party broker. At the relevant time he was not aware of other persons/entities (including the Company related entities) who were trading in the scrip and the same is of no concern to him. Further, he was not aware that the trades were happening with Dhyana group entities as alleged. Further, he was not aware about the mode and manner of trading of the alleged Dhyana group entities & the other preferential allottees.
- r. Further, he denied that he been provided exit by the alleged Dhyana group entities as alleged. All his sales were in the ordinary course, without being aware of the counter party buyers.

- s. He denied that he has misused the stock exchange system to generate fictitious long term capital gains so as to convert unaccounted income into accounted one with no payment of taxes as alleged. Same is a reckless allegation devoid of any basis.

5. Kalpesh Ugarchand Gadhecha (Did not appear in the Personal Hearing):

- a. He stated that he was neither aware of, nor connected with, nor involved in, nor participated in nor had the means to know and verify the alleged acts and omissions of entities of the purported Dhyana Group and (other) allottees or their alleged dealings or acts of sending any spam unauthorized SMS as alleged.
- b. He is a bona fide investor. He had invested on November 27, 2013 ₹ 20,00,000 towards 2,00,000 equity shares of Rs 10/- each on preferential basis out of my own funds.
- c. Pursuant thereto, as required, he held the shares during the lock in period of one year. Thereafter, upon expiry of the lock in period, he sold all his shares by way of a legitimate transaction through BSE.
- d. He sold all the shares during the period December 1 to 10, 2014. He has not executed any transaction after December, 2014 with regard to scrip of Dhyana Group and he has not traded in the shares of Dhyana Finstock Ltd. on 27th July 2015 on BSE. Further, against the total market orders during the period 1-10 December, 2014, the contribution of his orders were meager 73 i.e. just 3% of Total Orders.
- e. As such he is in no way concerned with the affairs of the company or company related entities or whatever happened in the shares of the company on BSE after 11th December, 2014.
- f. As on date of the Order, he did not have any share in the scrip Dhyana Finstock Ltd. Therefore, merely his gaining profit out of his sale transactions of shares of Dhyana Finstock Ltd on BSE and duly settled as per the Stock Exchange mechanism "long back in the month of December 2014 cannot and should not be the ground for usurping the provisions of the

SEBI Act for the alleged trading on July 27, 2015 by persons with whom directly or indirectly he does not have any relation / connection / nexus.

- g. He submitted that the findings contained in the said order as against him are erroneous and based on mere presumptions and assumptions.

6. Suresh Chindi Gowda (Represented by Ms Akansha Jain, Practicing Company Secretary & Mr. Amit Shah)

- a. He invested in the company in preferential allotment and the same was in compliance with SEBI guidelines and Companies Act. Further, he had invested in Dhyana Finstock Limited in the normal course of investment from his owned funds.
- b. He submitted that he sold 36,700 shares on 6 different trading days from February 2015 to December 2015 in very small quantities and is still holding 1,13,300 shares.
- c. SEBI's action of debarring him is not justified by any evidence. This order had caused great hardship to him.
- d. He stated that he is not connected to Company, its Promoter, its Directors, other Preferential allottees, Dhyana Group, Exit Providers, manipulators in SMS scam and even order does not prove his connection with any of these entities.
- e. He strongly refuted the allegations that preferential allottees, Dhyana and its promoters/directors had prior understanding, arrangement and purpose. He has invested in the company as Long term investment and still holding the same. Before selling the shares he held the shares for almost 2 years.

Consideration

10. I have considered the allegations levelled against the Noticees in the *interim order*, their replies/written submissions and other material 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.

11. It is noted that the Noticees no. 13-22 being the preferential allottees, have not disputed the facts relating to preferential allotments and the trading in the scrip, as alleged in the *interim order*. The Noticees have contended 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 the Noticees. 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, circumstances and the reasons necessitating issuance of directions by the *interim order* have been examined and dealt with in the said *interim order*. The *interim order* has also been issued in the nature of a show cause notice affording the Noticees a post-decisional opportunity of hearing. I also note that the power of SEBI to pass *interim orders* flows from sections 11 and 11B of the SEBI Act which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 are noteworthy:-

"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 have, 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. "

12. Thus, considering the facts and circumstances of a particular case, an *ad-interim ex-parte* order may be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the *interim* order in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4) clearly provides that *"Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned"*. Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an *interim* order is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rathb & Others Vs. SEBI* (2002) 2 Bom CR 403, has held as under:

" 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."

13. The Noticees have raised another contention that the power to issue directions under sections 11(4) and 11B is a drastic power having serious civil consequences and ramifications on the reputations and livelihood of those against whom it is directed. The said power is not available for routine application and cannot be used for penal action. In this regard, I note that in this case the purpose of the *interim order* is to achieve the objectives of investor protection and secure the market integrity by enforcing the provisions of the SEBI Act. Urgent measures by way of restraining the noticees from continued operations in the securities market were considered necessary in furtherance of the objectives of the SEBI Act. I, therefore, do not agree with the contentions of these Noticees that such an exercise of power is not done routinely and retrospectively.
14. The Noticees have contended that their wrong doing is not explained or established in the *interim order* and that there has been no attempt to examine their particular and individual role in the matter. I do not agree with the contention of the noticees as in my opinion the modus operandi / scheme adopted by the noticees in the instant case has been broadly brought out in paragraphs 34 to 41 of the interim order. It appears that the securities market has been the medium through which the tax evasion was sought to be achieved by the preferential allottees. The noticees connected to Dhyana are seen to have facilitated such preferential allottees to exit by reaping huge profits. In other words, preferential allottees strategically locked in the shares for the minimum required period and exited the market at an appropriate time merely to avoid the tax implication. It is relevant to note that the securities market is regulated so that fraudulent and unfair practices are not perpetrated by certain entities while dealing in securities aiming to enrich themselves unjustly at the cost of other innocent investors in the market.
15. Certain Noticees have raised the contention that there was no urgency warranting such an *ex parte ad-interim order* and also that *interim order* has been passed after lapse of ten to eleven months from

July 27, 2015. The issue of urgency has been considerably addressed in para 16 of the confirmatory order dated November 1, 2016 passed against certain other entities involved in the Dhyana group matter. Further, as brought out in the *interim order* also, apart from the report of BSE, SEBI carried out its examination by calling for information such as bank statements of various entities and other information as required in the matter. SEBI in its regulatory capacity is required to act in such cases as there could be further damage to market integrity if the activities are allowed to continue.

16. Some of the Noticees have also contended that the primary allegation in the *ex-parte ad interim order* against them is of conversion of unaccounted income into accounted income and subsequent tax evasion which falls outside the jurisdiction of SEBI and that assuming without accepting that SEBI does have jurisdiction to adjudicate upon the same, then also, no case has been made out to establish that their trading in the scrip was with a view to evade tax. The Noticees have also submitted that they have not received any query from Income Tax Authorities regarding LTCG and tax evasion falls outside the jurisdiction of SEBI. They have stated that their capital gain is genuine. As regards the lack of jurisdiction of SEBI in tax avoidance matters, I note that the *interim order* has brought out the *modus operandi* wherein the company in nexus with the *preferential allottees/pre IPO transferees* was able to float equity shares on preferential basis and thereafter the connected entities misused the stock exchange mechanism to provide exit to *preferential allottees / pre IPO transferees* at a high price in order to help the preferential allottees to generate fictitious long term capital gain (LTCG). The *interim order* has detailed at length the manner in which price and volume of the scrip were *prima facie* manipulated by the entities. The manipulation in the traded volume and price of the scrip by a group of connected entities has the potential to induce gullible and genuine investors to trade in a scrip in which they would otherwise not trade. As the name suggests, the exit providers in order to provide exit to *preferential allottees / pre IPO transferees* at a high price interfered with the open price discovery mechanism of the stock exchange. Apparently, when certain entities act in concert with the motive of making exorbitant profits which may not

have arisen from normal trades in the securities market, such entities are distorting the fair and free operation of price discovery and cutting at the root of market integrity. Thus, *prima facie* a fraud in the securities market is established in as much as it involves manipulative transactions in securities and misuse of the securities market. Accordingly, I am of the view that SEBI has acted well within its jurisdiction, in the matter. An observation in the interim order to the effect that the object of such market manipulation would have been enhancement of the gains from tax angle does not take the matter out of the purview of SEBI.

17. The Noticees have also 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 as nobody raised any grievance about preferential allotments made by the company during the relevant period. In response, it needs to be stated that the manner of issue of preferential allotment of shares is not the issue which has been called into question. The preferential allotment being strategically made by Dhyana to benefit certain entities at the cost of the integrity of the whole of securities market is the thrust of the interim order. Grant of permission to make preferential allotment / listing of the shares etc. does not preclude SEBI from taking any action, if the same is subsequently found to have been used as a tool for committing fraud in the securities market.

The Noticees have also contended that SEBI does not have jurisdiction to investigate matters relating to fraudulent SMS. I note that Dhyana, has taken the stand that it could not verify the identity, existence and commissions of Mr. Ravi Makwana, Shubh Investments, Adskaro (an unregistered telemarketer) and Oppulent Investment Adviser Private Limited. They are not in control of or aware of sender Id StAxis, www.bsebull, website GoDaddy.com LLC, www.bsebull.in and www.stocktips.in. In this regard, I note that several investors had lodged

complaints with the BSE / SEBI informing, inter alia, that they entered into buy trades in the securities of the company based on messages appearing on certain websites and stock tips received through SMS. Based on the analysis conducted by BSE for trades executed on July 27, 2015 as brought out in the interim order in paragraph 3, *prima facie*, the case appeared to be an instance of misuse of stock exchange system to generate fictitious Long Term Capital Gains (LTCG) where buyers were also lured to buy in the scrip (through SMS) to give exit to few shareholders/preferential allottees. In terms of regulation 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, dealing in securities shall be deemed to be fraudulent or an unfair trade practice if it involves fraud and includes planting false or misleading news which may induce sale or purchase of securities. SEBI's jurisdiction over those entities inducing others by whatever unfair means, including sms, to trade in the securities market is beyond doubt established in law.

18. 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."

19. In the instant case, the manner in which the allotment was made to the Noticees and the circumstances in which they sold the shares show that the same may have been an integral part of the entire scheme that has been detailed in the *interim order*. In view of the above, I am unable to accept the submissions of the Noticees in this regard.
20. The Noticees have contended that they had invested in the scrip of *Dhyana* from their own funds as genuine investors considering the preferential allotment a good investment opportunity. They have also contended that they are not connected/ related to the company or its promoters or directors or with any entities mentioned in the *interim order*. Further, they are not connected/ related to the entities that are alleged to have indulged in the price manipulation or with the exit providers/*Dhyana group*. In view thereof, they have submitted that they cannot be said to be involved in any dubious plan as alleged in the *interim order*. However, they have failed to give any plausible explanation or cogent reason as to how the company could make allotment to them if they were not known to it or its promoters/directors. Moreover, how the connection between the company and preferential allottees can be presumed, has been sufficiently elaborated in paragraphs 22 to 25 of the confirmatory order dated November 1, 2016. As detailed investigation in the matter is still in progress and the facts and veracity of the submissions along with the documents are being looked into by the investigation, I do not deem it appropriate to deal with these submissions of the noticees at this juncture, as the same would prejudice the investigation.
21. It was observed that during the Examination Period (as defined in the *interim order*), *Dhyana Group* entities were primarily involved in pushing the price up during Patch 1 (when the volume in the scrip was very low) by contributing to positive LTP and thereafter acting as buyers in Patch 2 in order to provide exit to preferential allottees / the company related entities and in the process creating artificial volume. In the process, the preferential allottees made a cumulative profit of

₹ 107.43 crore on a total investment of ₹ 5.22 Crore, which means a whopping return of approximately 2060 % on their investment in a period of 20 months (including the lock in period of the shares allotted in the preferential allotment) and claimed the exemption of Long Term Capital Gains (LTCG) on such profit as brought out in the *interim order*. Hence, the *preferential allottees* with the aid of the entities of the *Dhyana 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.

22. The facts and circumstances discussed in the *interim order* further indicate a scheme, device and artifice to dump shares on July 27, 2015 in a pre-planned manner i.e. by employing a scheme of sending fake SMS inducing investors to buy in the scrip. The spurt in transactions following the circulation of sms completed the chain of events which started with the preferential allotment in *Dhyana* followed by listing at BSE and alleged price manipulation by *Dhyana Group*. Thus, apart from misusing the stock exchange mechanism for bogus LTCG, investors were also lured to buy shares of *Dhyana* at an unjustified price with the bait of stupendous profits through the sms and the shares were dumped on these investors. Considering that the pay-out for trades of July 27, 2015 amounting to ₹ 13,38,27,975/- was withheld by BSE, while the whole scheme involving these transactions is under examination/investigation, SEBI directed that BSE to continue withholding the payout until further orders. On an overall evaluation of the facts of the matter, I am convinced that there is a prima facie case made out against the entities covered in this notice generally and the investigation is further examining the matter, which would bring out their roles in detail depending on the material. I do not want to prejudice the investigation in any manner whatsoever, at this stage.

23. Having dealt with the preliminary and common contentions of the noticees, I now proceed to deal

with other specific submissions of the entities which are not considered in the common examination above.

I. Non- Executive Directors:

24. Ms. Priyanka Nurpesh Tripathi, a non-executive director, had submitted that she was approached by the Promoter & Director of the company for directorship and was appointed as a non-executive and independent director on March 31, 2015 i.e. not only post the allotment but also post the lock in period, just a few months prior to the end of the investigation period. She was not involved in the day-to-day management of the company. She has resigned from the company on 10 November 2016 and as such cannot be held for the alleged fraud. Her authorised representative during the hearing submitted that although she attended some of the board meetings of the company, she was not in the Audit committee of the company. From the records available at MCA, it is noted that Ms. Priyanka Nurpesh Tripathi was appointed on March 31, 2015 and she had resigned on November 10, 2016.
25. Mr. Harshad Kumar Patel through his authorised representative submitted that the price movement in the scrip was discussed in the board meeting of the company, but it was concluded that the price movement is based on demand and supply in the market. Mr. Harshad Kumar Patel has contended that he was neither aware of nor played any role in the scheme, plan, device and artifice as alleged to have existed/framed as he was an independent director not involved in the day to day operations of the companies. From the extract of the Annual Report of Dhyana for the FY 2014-15, it is noted that Mr. Harshad Kumar Patel has chaired four meetings of the Audit Committee.
26. The position of a 'director' in a company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director. From the charges against the independent directors, I have noted that Ms. Priyanka Nurpesh Tripathi was not a
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director during preferential allotment by the company in November 2013. In my view, she cannot be made liable for any acts of commission or omission by the company. On the other hand, Mr. Harshad Kumar Patel was a director during the period and even chaired the Audit committee. He was present during four meetings of the Audit Committee. In view of this, I do not find it appropriate to relax the directions issued in the interim order against Mr. Harshad Kumar Patel as he appears to have the knowledge of the activities of the company.

II. Dhyana and Promoters:

27. Apart from the common contentions raised above, Dhyana has also contented that just because it shared a few common directors/promoters with the four private limited companies, it cannot be alleged that it was in any way related/ connected or was aware of or involved in or had control or influence on their acts and omissions alleged to be fraudulent in the interim order. I do not agree with the contention of Dhyana in this connection. In my view, all the four private limited companies viz., Mainak Com trade Pvt Ltd., Parin Infrastructure Pvt Ltd., Pranatpal Tradelinks Pvt. Ltd. and Taru Pallav Projects Pvt. Ltd. are part of the Dhyana group and the basis of connection has been brought out in table 3 of the *interim order* at paragraph 20. Company being an artificial person can only act through its directors. The thread of common directors / promoters joining all the five companies (Dhyana and four private companies) is *prima facie* sufficient to connect them together and the ongoing investigation may further unveil the details regarding the connection of Dhyana with the four private companies.
28. Mr. RajeshKumar Theophilbhai Christie submitted that he was in the management of the company and was busy in managing the company and its affairs for the growth and development of the company itself. He further submitted that his name is not mentioned anywhere in the list of connected or related entities forming part of Dhyana Group with the company except as a Share

Holder cum Director of. M/s. Parin Infrastructure Private Limited (PIPL). Further, he was appointed on the board of the PIPL as a director from 14th June, 2012 to 1st October, 2014 and was holding just 5000 shares of that company. He was never in the management of PIPL company at all. He resigned from the PIPL with effect from 1st October, 2014.

29. I note from the extract of the Annual Reports of Dhyana for the FY 2014-15 and 2015-16 that Mr. RajeshKumar Theophilbhai Christie was acting in the capacity of Executive Director cum promoter of the company. Further, he was also the member of the Audit Committee and has attended meetings of Audit Committee. As an authorised signatory of Dhyana, he has also signed the Annual Reports. As a Promoter of the company, he was holding 37,128 shares of Dhyana.
30. Being part of the board, he may have been responsible for the affairs and conduct of the company during November 2013, when the preferential allotment was made. Further, he was one of the shareholders of Parin Infrastructure Pvt. Ltd. whose another shareholder viz. Priti Jaykarbhai Christian is found to be a director in Mainak Comtrade Pvt. Ltd. Mainak Comtrade Pvt. Ltd. in turn was observed to be connected to the company and various entities of Dhyana Group were transacting with Mainak Comtrade Pvt. Ltd. In the circumstances, I do not find it suitable to relax the directions issued in the interim order against Mr. RajeshKumar Theophilbhai Christie as a prima facie case is made out against him. Investigation is further examining the matter, which would bring out his role, if any, in detail depending on the evidence.

III. Preferential Allottees & Dhyana Group:

31. Noticees Shailesh Baldevbhai Patel and Harshaddkumar Baldevbhai Patel have requested SEBI to release their payout immediately. As brought out in the interim order, the Noticees Shailesh Baldevbhai Patel and Harshaddkumar Baldevbhai Patel, being preferential allottees have also sold

on July 27, 2015, the day when the trades appeared to have been done by *Dhyana* group/exit providers. Moreover, the trades on July 27, 2015 appear to have been done by sending fake SMS inducing buyers to buy in the scrip. It is pertinent to mention that detailed investigation of the entire scheme employed in this case is necessary to ascertain the role played by the noticees in the alleged manipulation including the persons behind the perpetration of the SMS. At this stage, I cannot accede to the request to release the pay-out, pending the investigation.

32. Certain Noticees have submitted that they have no nexus with the exit providers/ Dhyana Group/ promoters and directors of Dhyana or the company itself as none of the shares sold by them were purchased by exit providers mentioned in the *interim order*. As the Noticees have failed to give any satisfactory explanation for their acts and omissions as described in the interim orders and have not been able to make out a prima facie case for revocation of the interim orders, I wish to keep all questions related to the role of the promoters in the alleged fraudulent and manipulative activities open so that the investigations pending in the matter may not be prejudiced in any manner by this order.

33. Some of the promoters have contended that they have sold only a small percentage of their total shares allotted under preferential allotment and some others have contended that they have sold shares of *Dhyana* much before July 27, 2015 and are still holding majority of shares in Dhyana. What is material for the investigation is the entirety of the scheme beginning from the fact of preferential allotment till the exit of 39 preferential allottees in a strategic manner by sending fake SMSs. The submission of the noticees do not hold merit in the background of these facts.

34. The promoters have also submitted that they are not connected to the SMS providers and had no knowledge of the same. They are in no way connected to SMS senders. As brought out in the

interim order, the facts and circumstances indicate a scheme, device and artifice to dump shares on July 27, 2015 in a pre-planned manner i.e. by sending fraudulent SMS to investors. Considering that detailed investigation of the entire scheme employed in this case to find out the role and connection of the entities involved in sending SMS and calling investors to lure them to purchase shares of Dhyana with the promoters or directors of the company/net sellers/ Dhyana Group is in process, at this stage, the submissions of the noticees cannot be accepted on face value. Investigation may reveal further details regarding the contentions of Noticees.

35. The Noticees have also contended that if SEBI found something abnormal in equilibrium price which was established at ₹. 251/ on June 13, 2016, SEBI should have intervened in that case and taken some precautionary measures. They have no role in establishing equilibrium Price of ₹. 251/. They have further submitted that the abnormal price rise was due to failure of surveillance mechanism at Exchange and SEBI. In this regard, as brought out in the Interim order, Mr. Gautamsingh Zala, entity forming part of Dhyana Group was first to place buy order for 1500 shares @ ₹. 251 which accounted for 38.46% of total buy order quantity placed above ₹ 251. In this regard, I note that detailed investigation in the matter is in progress which would reveal the actual role of each of the noticees in the matter and I do not wish to interfere with the same.
36. It is also submitted by the Noticees that SEBI did not check the authenticity of investors or carry out any due diligence of complaints before withholding the payout by BSE notice and even before passing *interim order* on 1st June 2016. In this regard, I find it important to mention that the *interim order* clearly mentions that more than 100 investors have lodged complaints with the Exchange / SEBI, inter alia informing that they have entered into buy trades in the securities of the company based on messages appearing on website bsebull.in & spam messages on stockAxis.com websites. The *interim order* in paragraph 30 discusses the trading pattern of complainants. The *prima facie*

findings in respect of the trades on July 27, 2015 are based on order log analysis as brought out in para 19 of the interim order and I do not find any scope for interference.

37. As brought out in the interim order, from the facts of the case, it appears that the preferential allottees and exit providers have in a pre-planned manner dumped shares on July 27, 2015 on gullible investors by sending fraudulent SMS. The subsequent price crash in *Dhyana* also indicates creation of artificial interest in the scrip during the period post listing at BSE which dampened with the dumping of shares completing the classic pump and dump chart of price and volume movement. As brought out in Para 58 of the *interim order*, there are reasonable grounds to believe that entities who had purchased shares of preferential allottees at a high price during the examination period, may have availed the services of some unidentified entities to send the SMS and thereafter dumped the shares of *Dhyana* so acquired on unsuspecting investors by employing a scheme of sending fake SMS inducing them to buy in the scrip. The scrutiny/examination/investigation to establish the connection of SMS sender with the entities who have dumped the shares on July 27, 2015 and the role of company or any other entity in the scheme is in progress.
38. The noticees submitted that the manner of annulment of trades in terms of the interim order is not proper. According to them once the securities are released to the buyers, the pay-out of funds cannot be stopped. Further, nowhere in the entire order any reasoning is given for the release of securities. Further, complainants have received their securities and there is no genuine basis for their complaints. In this regard, I find it important to mention that the interim order clearly mentions that sale done of July 27, 2015 *prima facie* appeared to be fraudulent trades. Further, the whole scheme involving these transactions is under investigation by SEBI. Thus as a proactive measure and in order to prevent the use of such sale proceeds in any manner by the sellers in such

trades, the said sale proceeds were directed to be withheld by BSE.

Conclusions /Directions

39. As the Noticees have failed to give any satisfactory explanation for their acts and omissions as described in the interim orders and have not been able to make out a prima facie case for revocation of the interim orders, I wish to keep all questions related to the role of all the Noticees except Priyanka Nrupesh Tripathi in the alleged fraudulent and manipulative activities open so that the investigations pending in the matter may not be prejudiced in any manner by this order. The ameliorating relief sought by some of the noticees like removal of restriction on sale of securities from their portfolio subject to continuation of freezing upon some of the securities is not acceptable, as the same would effectively tantamount to revoking the order of restraint passed against the noticees amongst others. The relaxations sought, if granted, to the noticees at this stage i.e. pending investigation, would undermine the relevance of such restraint orders passed in exercise of statutory powers and would discriminate against other similarly placed entities covered in the orders. I, therefore, in exercise of the powers under sections 11(1), 11(4) and 11B of the SEBI Act, hereby, reject the prayers of the 22 Noticees for setting aside the interim orders or for complete removal of restraints imposed by it.
40. 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 that the directions issued vide *ad interim ex parte* order dated June 01, 2016 as against all the Noticees except Priyanka Nrupesh Tripathi, shall continue until further orders. This is however subject to the reliefs which are given to other entities, as detailed hereunder with immediate effect so as to ensure consistency with the earlier orders passed against other entities in this matter, namely:-
- (a) Carry on 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 / sell the shares lying in their demat accounts or in any open offer/delisting offer under the relevant regulations of SEBI, as on the date of the interim order, with the condition that the sale proceeds should be deposited in an interest bearing Escrow account with a nationalized bank.
- (g) 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 41 (a) to (e) above;
 - 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.

- (h) 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.

41. The directions against Priyanka Nrupesh Tripathi contained in the earlier interim order dated June 01, 2011 shall stand revoked.
42. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

DATE: May 26, 2017

G. MAHALINGAM

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA