

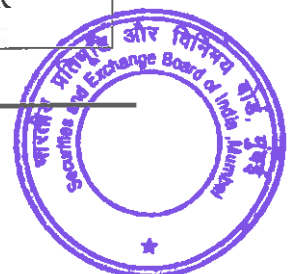
SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND IN CONTINUATION OF ORDERS DATED JUNE 29, 2015, JANUARY 04, 2016 IN THE MATTER OF ECO FRIENDLY FOOD PROCESSING PARK LIMITED, ESTEEM BIO ORGANIC FOOD PROCESSING LIMITED, CHANNEL NINE ENTERTAINMENT LIMITED AND HPC BIOSCIENCES LIMITED.

In respect of:

S. No.	Name of Entities	PAN
Directors:		
1.	Mr. Arun Kumar Gupta, Director of HPC Biosciences Limited	AAKPG5996K
2.	Mr. Dinesh Kumar Jindal, Director of Channel Nine Entertainment Limited.	AAIPJ3373K
Trading Group:		
3.	Mr. Ashvin Verma	AKFPV6256L
4.	Ms. Sunila Rai Verma	ASPPV7875F
Preferential allottees of shares of Eco Friendly Food Processing Park Ltd.		
5.	Mr. Ahmad Sadat	AABPA7646R
6.	Mr. Mohammad Aamer	ADAPA8647A
Preferential allottees of shares of Esteem Bio Organic Food Processing Park Ltd.		
7.	Mr. Ajay Kumar Katta	ACXPK2323H
8.	Ms. Poonam Kansal	AICPK7883R



Preferential allottees of shares of Channel Nine Entertainment Ltd.:		
9.	Mr. Naveen Gupta	AALPG0528Q
10.	Ms. Manvi Goenka	AAAPA2152R
11.	Mr. Ashok Garg	ABVPG2657B
12.	Mr. Gaurav Arya	ACDPA3515B
13.	Ms. Neeru Ashish Garg	AHIPG6452D
Preferential allottees of shares of HPC Biosciences Ltd.		
14.	Mr. Rakesh Bajaj	AAKPB9948E
15.	Mr. Jitendra Ranchhodbhai Patel	ABXPP2739D
Pre IPO Transferees in respect of shares of Esteem Bio Organic Food Processing Ltd.:		
16.	Mr. Mohammad Anwar	AADPM9208K
17.	Ms. Tarannum Aamer	AEHPT6622C
18.	Ms. Naz Shazia	BBWPS2176R
19.	Ms. Seemeen Ikram	AABPI1183M

1. Securities and Exchange Board of India ("SEBI") vide an *ad interim ex-parte* order dated June 29, 2015 read with Corrigendum dated January 04, 2016 (hereinafter collectively referred to as "*interim order*") restrained 254 entities including Eco Friendly Food Processing Park Limited (hereinafter referred to as "Eco"), Esteem Bio Organic Food Processing Limited (hereinafter referred to as "Esteem"), Channel Nine Entertainment Limited (hereinafter referred to as "CNE") and HPC Biosciences Limited (hereinafter referred to as "HPC") [collectively referred to as "the scrips/the companies", listed on the Small and Medium Enterprise ("SME") Segment of the Bombay Stock Exchange Limited ("BSE")] from accessing the securities market and further prohibited them from buying, selling or dealing in securities in any manner whatsoever, till further directions. The 254 persons/entities including the aforesaid 19 entities (hereinafter referred to as "noticees") against whom the *interim order* was passed were advised



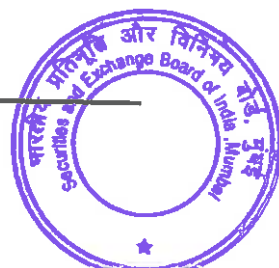
to file their objections, if any, within twenty one days from the date of the order and, if they so desire, to avail themselves of an opportunity of personal hearing before SEBI.

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

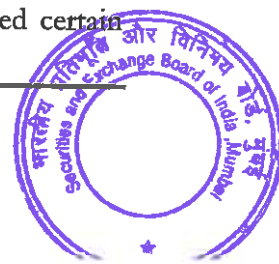
- a) The aforesaid four companies had very small share capital prior to the year 2011. In the year 2011 and 2012, the companies increased their capital base by issuing shares to several entities, (hereinafter referred to as "*preferential allottees*"), by way of preferential allotment and later by issuing bonus shares. Certain *preferential allottees* transferred their shares held in the respective companies to several entities (hereinafter referred to as "*pre IPO transferees*").
- b) Thereafter, all the four companies came out with IPOs and the entities belonging to the *Funding Group* (as defined in paragraph 14 of the *interim order* dated June 29, 2015) funded substantial portion of the IPOs. The IPO proceeds of the respective IPOs were immediately routed back to the entities of the *Funding Group* by the concerned companies thereby allegedly financing their own IPO and allotting shares without receipt of consideration to the extent they returned the subscription monies to the *Funding Group* from the IPO proceeds. The *Funding Group* cumulatively financed the subscribers in the aforesaid four companies, to the tune of ₹17.62 crore and received back ₹30.06 crore from the said companies immediately after the IPOs.
- c) The respective companies had actively concealed the deviation in utilisation of IPO proceeds as they deliberately did not make any disclosures as required under clause 46 of the SME Listing Agreement.
- d) Once the shares were listed on the stock exchange, the *Trading Group* (as defined in paragraph 26 of the *interim order* dated June 29, 2015) entities increased the prices of the scrips significantly through manipulative trades.



- e) The said price movement was not backed by fundamentals or any announcements made by these companies.
 - f) After the expiry of the lock-in period, the *Trading Group* entities purchased shares from the *preferential allottees* and *pre-IPO transferees* at artificially increased prices.
 - g) In the whole process, entities of the *Trading Group* provided a hugely profitable exit to the *preferential allottees* and *pre IPO transferees*.
 - h) Consequently, all the *preferential allottees* and *pre-IPO transferees* have collectively made a profit of ₹614 crore.
 - i) The funds required for purchase of shares by the *Trading Group* entities had been provided to them through layering of fund transfers from several entities including the entities belonging to the *Funding Group*.
 - j) It was therefore alleged that the *preferential allottees*, *pre IPO transferees* acting in concert with *Funding Group* and *Trading Group* have used the stock exchange system to artificially increase volume and price of the scrip for making illegal gains and to convert ill-gotten gains into genuine one.
 - k) Further it was alleged that the whole scheme could not have been possible without the involvement/ connivance of the four companies, their promoters and their directors.
3. The *interim order* has alleged that the acts and omissions of the four companies, *Funding Group*, *Trading Group entities*, *preferential allottees* and *pre-IPO transferees* are 'fraudulent' as defined under regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations") and are in contravention of the provisions of Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(a), (b), (c), (d), (e) and (g) thereof and section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). This allegation against the noticees was made in the interim order, on the basis of the following observations:



- (a) *The Trading Group* entities acted as buyers to the *pre IPO transferees/ preferential allottees* thereby creating artificial demand for the supply of shares from *preferential allottees/ pre IPO transferees*.
- (b) *The Trading Group* entities provided hugely profitable exit to the *pre IPO transferees/ preferential allottees* in these scrips which hardly had any credential in the market.
- (c) In the process, the noticees of *Trading Group* acting in concert with the *pre IPO transferees/ preferential allottees* misused the stock exchange system to provide fictitious Long Term Capital Gain (LTCG) benefit to the *preferential allottees/pre IPO transferees* so as to convert unaccounted income into accounted one with no payment of taxes as LTCG is tax exempt.
- (d) Securities market system was used to artificially increase the volume and price of the scrip for making illegal gains and to convert ill-gotten gains into genuine one.
- (e) Thus, the *preferential allotment* was used as a tool for implementation of a dubious plan, device and artifice of the *noticees* and the *preferential allottees/pre IPO transferees*.
4. 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 February 11, 2017, March 1, 2017 & April 24, 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.
5. After considering the facts and circumstances brought out by the entities who had responded to interim orders, to avoid erosion of value of securities due to volatility, maintain some investment avenues in the Capital Market such as mutual funds and to address the need of funds for meeting the business/ any other exigencies, all the entities were granted certain



common interim reliefs, including the following:-

- (a) to sell the securities lying in their demat accounts as on the date of the respective interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange and keep the sale proceeds in an escrow account;*
- (b) to utilize such sale proceeds for the purpose of investment in mutual fund units and fixed deposits.*
- (c) to utilize 25% of their portfolio value for their business purposes and/or for meeting other exigencies subject to the condition that the balance portfolio value does not go below the profit/ loss made by them.*

6. In addition to the above reliefs, vide letters dated January 15, 2016, January 19, 2016, February 29, 2016, and May, 31, 2016, the following reliefs were also allowed to the 17 noticees who had responded to the interim order:

- (i) to subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;*
- (ii) to avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.*
- (iii) to sell the securities lying in their demat accounts as on the date of the interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange and the shares of 4 scrips in the SME segment in which the Interim order dated June 29, 2015 has been passed, in an orderly manner under the supervision of the stock exchanges so as not to disturb the market equilibrium and deposit the sale proceeds in an interest bearing escrow account with a nationalised bank.*
- (iv) to utilise and deal with the sale proceeds, lying in the aforesaid escrow account under the supervision of the concerned stock exchange, as provided hereunder:-*
 - (a) the sale proceeds may be kept in a fixed deposit with a nationalised bank or may be utilised for subscription to units of the mutual funds which shall always be held in the demat form and if such units are redeemed the proceeds thereof shall be credited to the aforesaid escrow account or may be utilised for subscription to the units of mutual funds;*

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

7. In addition to the above reliefs, Mr. Dinesh Kumar Jindal and Mr. Arun Kumar Gupta were also allowed “to utilise up to 25% of the value of their portfolio as on the date of the interim order for their business purposes and/ or for meeting other exigencies”. The reliefs were granted through a letter which was later subsumed in the order dated August 25, 2016.

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

8. Out of the total 254 entities debarred vide the *interim order*, the confirmatory orders have already been passed in respect of 235 entities. Accordingly, the proceedings against remaining 19 entities are being dealt with in this order.

9. *The interim order* highlighted the profit/gain earned by the *preferential allottees/pre IPO transferees*. The details of the profit/gain earned by the 15 *preferential allottees/pre IPO transferees* covered in this order are tabulated below:

Profit made by Preferential Allottees / Pre - IPO Transferees in Eco			
S. No.	PAN	Name	Profit (LTCG) (₹)
1.	AABPA7646R	Ahmad Sadat	1,71,86,460



2.	ADAPA8647A	Mohammad Aamer	1,70,56,400
Profit made by Preferential Allottees / Pre - IPO Transferees in Esteem			
3.	AICPK7883R	Poonam Kansal	4,66,99,920
4.	ACXPK2323H	Ajay Kumar Katta	2,41,15,680
5.	AADPM9208K	Mohammad Anwar	2,01,44,145
6.	BBWPS2176R	Naz Shazia	1,94,17,815
7.	AABPI1183M	Seemeen Ikram	1,48,78,980
8.	AEHPT6622C	Tarannum Aamer	1,26,22,515
Profit made by Preferential Allottees / Pre - IPO Transferees in CNE			
9.	AHIPG6452D	Neeru Ashish Garg	1,79,56,350
10.	ACDPA3515B	Gaurav Arya	1,33,29,300
11.	ABVPG2657B	Ashokh Garg	1,29,54,300
12.	AALPG0528Q	Naveen Gupta	7,77,99,200
13.	AAAPA2152R	Manvi Goenka	1,12,66,300
Profit made by Preferential Allottees / Pre - IPO Transferees in HPC			
14.	AAKPB9948E	Rakesh Bajaj	1,14,47,520
15.	ABXPP2739D	JITENDRA RANCHHODBHAI PATEL	2,01,91,248

10. The *interim order* highlighted the fact that the *Trading group* bought most of the shares sold by the *preferential allottees / Pre IPO Transferees*. The details of the value of the exit provided by the two entities of the Trading group covered in this order are tabulated below.



PAN	Name	Bought from Preferential Allottees / Pre IPO Transferees	
		Quantity	Value in ₹
AKFPV6256L	Ashvin Verma	5,89,800	23,90,42,190
ASPPV7875F	Sunila Rai Verma	61,200	2,85,34,800

11. Majority of entities have already been heard and their replies are on similar lines. Some of the entities have sought adjournment/documents solely with a view to delay the proceedings. Certain other entities have not sent any reply or appeared for the hearing. The proceedings are at a stage now, that after about two years from the date of the interim order, the passing of the confirmatory order cannot be delayed / deferred any further. Thus, looking at the matter holistically as a group matter, I am considering passing of confirmatory order 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.

12. In the case of Noticees who have submitted similar 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. Directors

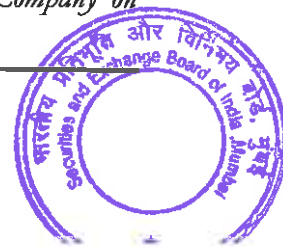
1. **Mr. Arun Kumar Gupta (Director in HPC)** (did not appear in the personal hearing):
 - a) *He came to know that he was appointed as director of HPC on 29/09/2012 w.e.f 01/10/2011 and discontinued from 04/10/2013.*
 - b) *He has never dealt in the said four companies. He never held any single share of the said companies or any*



other interest before the appointment, during the appointment and/ or after the retirement. However, during the period of his appointment, the share price of the company was well maintained and at a glance it is not shown that there was manipulation in the share price.

2. Mr. Dinesh Kumar Jindal (Director in CNE) (Represented by Advocate Ranjit Bhonsale, CS Satyender Kumar):

- a) He stated that during a programme, his professional colleague introduced him to Mr. Vijay Jindal, Chartered Accountant, who was one of the promoters in CNE, offered him position of independent director in CNE. He initially rejected but on his persistence and relying on the words of professional colleague, accepted the offer.*
- b) Before getting appointed as independent director, he looked into the background of the Company and its past work profile and to the best of his knowledge and understanding found no mischief or wrong-doing in the Company.*
- c) He does not share any relation or connection with the entities mentioned in the Order. He is not connected or related to the Company/its promoters/its directors/its senior management personnel except in the capacity as an independent director. He was not involved in the day to day affairs of the Company and was only participating in the Board meetings of the Company. He did not take sitting fees in lieu of the services rendered and had no financial transaction with the Company/its promoters/its directors.*
- d) Independent director by its nomenclature per-se is a person which is not related to and has no connections with the Company or its promoters/directors. The contention is supported by the clause 49 of the listing agreement which deals with the concept and matters related to Corporate Governance and state of affairs. He has also relied on judgement in this regard.*
- e) He checked the requisite compliances done in the course of public issue of the Company and to the best of his knowledge, he believed that the documents/information to be fair and depicting fair picture.*
- f) He was not able to devote much time to the Company. Thus he resigned from the Company on*



27/06/2013.

- g) He is not party to the alleged design of misuse of funds and was not aware if CNE was making sham preferential allotment(s)/ public issue or had no plan to pursue the purpose mentioned in the offer document.
- h) He had not committed any fraud and also not indulged in fraudulent trade practice. Further, he had no clue that holding an independent office in a closely held company would lead to a situation as it is.
- i) The charges of fraud and manipulation are levelled against him without any cogent evidence on record and without giving any notice of investigation or opportunity of hearing. He has relied on the judgement of Hon'ble High Court of Calcutta Hon'ble SAT.
- j) He has submitted that he was appointed as the Chairman of the audit committee however, no meetings of the audit committee were held till the time he resigned on April 27, 2013.
- k) He was not in charge of the IPO.
- l) The annual report for the financial year 2012-13 mentions that he attended all the 23 meetings of the board however, he denies that he had attended all the 23 meetings of the board. He denies that he had attended any of the board meetings after the approval of the prospectus on February 16, 2013. His signatures has been forged as Audit committee chairman on Form A of Annual Report for the financial year 2012-13 submitted to Bombay Stock Exchange.
- m) His letter of resignation dated April 27, 2013 was altered /forged to June 27, 2013
- n) He had no information of Funding group or Trading group. He was not aware of any links between directors and promoters of CNE and preferential/pre-IPO allottees and the subscribers to the IPO.
- o) The price movement of scrip started in Jan/Feb 2014 i.e. long after his cessation as Independent director.
- p) There is no material or evidence to even remotely indicate an alleged prior understanding, arrangement or purpose.
- q) He is not a relative or in any way connected to Mr. Vijay Jbindal, the promoter of CNE or any other promoter or director of CNE.



II. Trading Group

1. Ashvin Verma and Sunila Rai Verma (Represented by Mr. Ashvin Verma):

- a) *Sunila Rai Verma is mother of Ashvin Verma*
- b) *They do not hold any share and they have no dealings in any shares.*
- c) *On receiving the copy of order from SEBI, they wrote an email to NSDL and CDSL to know the details of demat accounts in their name. They received a Consolidated account statement from NSDL, wherein they found that their demat account has shares, which they have never opened. They have never opened any demat account.*
- d) *The demat account opened in their name is forged.*
- e) *He submitted that he had given his documents to one of his friend who used it for opening the demat account.*
- f) *They have requested to close the demat account instead of freezing it, as it does not belong to them.*

III. Preferential Allottees and pre IPO Transferees:

(1) Mr. Mohammad Anwar, Mr. Ahmad Sadat & Ms. Naz Shazia (Represented By CS Mr. Harshal Madan & Ms. Sonam Ishwar Lal)

- a) *They refuted the allegations against them as the same being without evidence, arbitrary, unfounded and against the principles of natural justice and in breach of Article 14 of Constitution of India.*
- b) *They submit that all the inferences drawn qua their trading pattern are based on the conjectures and surmises and remain inconclusive in as much as the allegations levelled under the Order have not been substantiated with any documentary evidence or any inference thereto.*
- c) *They are regular investors and active in stock and commodity trading. The investment in the two scrip is a minor percentage of their total investment in securities market. They are retail investors who found themselves lucky to get huge profits.*
- d) *Around September 2012, they heard about Eco in case of Mr. Ahmad Sadat & Esteem in case of Mr. Mohammad Anwar and Ms. Naz Shazia, which were unlisted company but were having plans for listing*



on SME exchange. Investors and people related to securities market, very well known to them and in whom they repose confidence and trust brought information of the proposed preferential issue in the two scrips. Mr. Ahmad Sadat made an application for allotment of shares on preferential basis pursuant to an information memorandum circulated by the Company brought to his knowledge by some other investors known to him. The net profit of Eco and Esteem, had substantially increased almost 30% and 20 % respectively, in the financial year 2011-12 as compared to with the profits declared in Financial Year 2010-11.

- e) They sold all their shares in the regular market lots on the screen based trading platform. They did not indulge in any circular trading or synchronisation trading or price manipulation of any kind. They sold their shares on the authorised trading platform of a recognised trading platform of a recognised stock exchange at different dates and different prices wherein the identity of the counterparty is not disclosed.
- f) They are not connected with any of the Funding Group/ Trading group, directors/promoters of the company. They invested their own funds in the purchase of the shares. The sale proceeds of the shares of were utilised by them for their personal expenses and for investment in their business.
- g) They have been paying their taxes as per law and till date no objection has been raised by Income tax Department on any of these investments.
- h) SEBI has drawn a line of Rs. 1 crore without any basis and has not acted in conformity with the principles enshrined in the Constitution of India. This is an arbitrary discrimination without any reasonable classification and in violation of Article 14 of the Constitution of India.
- i) The order uses the term prior understanding and arrangements without any factual basis. The prior understanding and arrangements with the promoters/directors has not been substantiated by any documentary evidence.
- j) They submitted that they are genuine investors and were not party to the said manipulations. Hon'ble SAT in the matter of 52 weeks Entertainment Limited v/s BSE Limited and SEBI, it observed that ----- "Fact that 86% of the shares of the appellant company are held by preferential shareholders and the fact that some of those preferential shareholders have allegedly indulged in market



manipulation cannot be a ground that all preferential shareholders are market manipulators.”

- k) The Interim order was passed without seeking any explanation from them which is in violation of principles of natural justice, equity and fair play. They submit that the said order has tarnished their reputation, caused an irreparable loss to their standing in their community and the regular business that they are carrying on.*
- l) They were not involved in creating any artifical volume as alleged in the order.*

(2) Ms. Tarannum Aamer and Mohammad Aamer: (Represented by CA Ketan Ruprani)

- a) Ms. Tarannum Aamer had submitted that she is a regular investor and has been investing in securities market from 2005-06. Mr. Mohammad Aamer had submitted that he is a regular investor and active in stock and commodity trading since 1991-92. They have made investments through primary as well as secondary markets, mutual funds, etc.*
- b) Mohammad Aamer submiteed that around September 2012, he heard about Eco which was an unlisted company but was having plans for listing on SME exchange. Investors and people related to securities market, very well known to him and in whom he repose confidence and trust brought information of the proposed preferential issue in the company. He made an application for allotment of shares on preferential basis pursuant to an information memorandum circulated by the Company brought to his knowledge by some other investors known to him. The net profit of Eco had substantially increased almost 30% in the financial year 2011-12 as compared to with the profits declared in Financial Year 2010-11.*
- c) Both of them sold all their shares in the regular market lots on the screen based trading platform. They did not indulge in any circular trading or synchronisation trading or price manipulation of any kind. The trading done by them has been small compared to the total trading in the stock exchange and cannot be deemed to have influenced the market or to be manipulative or fraudulent in nature.*
- d) They are not connected with any of the Funding Group/ Trading group, Eco, Eco group, its directors/promoters. The sale proceeds of the shares of Eco were utilised by them for their personal expenses*



and for investment in their business.

- e) They have been filing their income tax returns on regular basis and so it would be wrong to allege that the investment made by them was of unaccounted money. They have been paying their taxes as per law and till date no objection has been raised by Income tax Department on any of these investments.*
- f) They had invested their own funds in the allotment of Eco and there were no transfer of funds from/ to funding group.*
- g) Mr. Mohammod Aamer have submitted that the delay in execution of trade would not have happened, had he been acting in concert with the trading group.*
- h) No alert was generated by any regulatory authority including her broker, BSE and SEBI.*

(3) Mr. Ajay Kumar Katta (did not appear for hearing)

- a) The observation in the order are general in nature and these may not be applied uniformly.*
- b) He is not involved in any unfair, fraudulent and manipulative tactics in securities market.*
- c) It's a baseless and false allegation regarding involvement in unfair act, fraudulent and manipulation tactics which is not supportive of any facts or evidences.*
- d) There is no supporting evidence that he is involved in unfair act, fraudulent or in manipulation.*

(4) Ms. Poonam Kansal (did not appear for hearing)

- a) The order has been passed against joint and several entities including her. The said order has been passed without appreciation of the true and correct facts.*
- b) SEBI has arbitrarily and unreasonably passed an order restraining her from securities market.*

(5) Mr. Naveen Gupta

- a) He had invested in the Shares of CNE out of his own taxable income.*
- b) He is not connected or related to any entity or person who has been allotted shares of the said Company.*
- c) No connection or relation had been shown between him and the company or between him and the Directors/ Promoters of the Company/ any other group in the Interim Order.*



- d) He had sold the shares at prevailing market price which were executed through the normal screen based trading system of Stock Exchange, and he had no idea as to who are the buyers of the shares.
- e) If he had been a part of any alleged "modus operandi" or "manipulation", then he would have waited for a higher price of the scrip and then sold his shares at the highest possible price, which clearly was not the case.
- f) The money received by him through the sale of shares was utilized for his business and financial purposes and was not transferred directly or indirectly to any of the entities including alleged/ trading group/ funding group/ other preferential allottees/ pre IPO transferees/ promoters of the CNE/ others who traded in the shares of CNE.
- g) He is by no means associated with any of the Promoter/ director/ Preferential allottee/ shareholders of CNE.
- b) The said order is in gross violation of basic principles of "audi alteram partem"
- i) He invested into the CNE considering it a good avenue of investment as it had bigger expansion plans pointing towards bright future prospects.
- j) He has never had an iota of knowledge about existence of any "funding group". He did not deposit or receive any funds from CNE during the period of IPO.
- k) The profit/ gain made by him through sale of shares was not made under the alleged game plan or scheme. Moreover, he was never aware about any such game plan or scheme being in existence. The amount of gain out of such sale transactions has been duly disclosed in income tax return for assessment year 2015 – 16.
- l) He had no knowledge of any faulty scheme or mechanism, if any was subsisting in the mind of fraudsters.
- m) His transactions were not based on any premeditated understanding, plan, device or artifice as alleged and such allegation as far as they relate to him are based on impermissible assumptions.
- n) He relied upon the order of Hon'ble SAT in KSL Industries Ltd v. SEBI (appeal no 9 of 2003 decided on Sept 30, 2003) held that "A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained....that allegation of fraud cannot survive on mere conjectures and surmises. "



- a) *He was not aware about the existence of any Group which was acting hand in glove and neither he was connected or was in connivance with any such entities or persons.*
- p) *He has not violated any of the provisions of PFUTP Regulations.*
- q) *He has not indulged in repeated buying and selling of securities. Therefore, he cannot be alleged for any charge of manipulation or any device that has led to manipulation.*
- r) *None of his transaction had been alleged to be synchronized or matched transaction which in turns only confirms that he had no control over the transactions so executed.*
- s) *The order is arbitrarily infringing my fundamental right to do trade and business.*
- t) *Reliefs sought*
 - i. *to defreeze his demat accounts and allow him to deal, buy sell in securities market without any restriction to his rights till the passing of final order.*
 - ii. *to allow him to utilize the money arising out of such sale or otherwise disposal of securities from his demat account.*
 - iii. *Set aside the order dated 29.06.2015*

(6) Ms. Manvi Goenka(did not appear for hearing)

- a) *She had no connections with promoters of CNE either directly or indirectly.*
- b) *She has been transacting in securities market for more than 10 years.*
- c) *She has been dragged into the present issue without any basis or reasoning or specific allegation.*
- d) *The application form for preferential allotment was made through her husband's uncle Mr. O N Goenka. However, she had no information or knowledge of Mr. O N Goenka having relation or acquaintance with the promoters/ directors of CNE.*
- e) *She cannot be penalised on the basis of mere conjectures or surmises and apprehension that the profit made by any investor in the capital market was an account of fraudulent and unfair trade practices.*
- f) *The allegations levelled against her is absolutely vexatious, false and frivolous is borne out from the fact that she has not liquidated and terminated her entire shareholding when the price of CNE had increased in the stock market.*

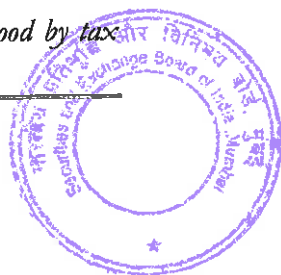


(7) Mr. Gaurav Arya (did not appear for hearing)

- a) *Interim order was issued without any prior letter or communication or any correspondence seeking explanation or clarification on the subject matter. This is against the basic principles of law of equity, fair play and natural justice.*
- b) *He is retail investor and trades in the market keeping utmost faith on SEBI and Stock Exchange.*
- c) *No query was raised by any regulatory authority. All his transactions were genuine, fair, and transparent and bonafide and not in violation of any provisions of the securities market laws.*
- d) *Open ended restraint order against him is in breach of fundamental right of carrying on business bestowed upon every citizen under the constitution of India.*
- e) *His investment in CNE is only a small part of his investment in capital market.*
- f) *He had no idea about buyer of his shares of CNE since all the transactions were executed through the normal screen based trading system of Stock Exchange.*
- g) *He has not connected to or related to any persons published by SEBI in the said interim order as a funding group.*
- h) *He has not employed any device, scheme or artifice to defraud in connection with dealing in or issue of CNE. Further, he has not indulged in fraudulent acts and unfair trade practices.*

(8) Ms. Neeru Ashish Garg & Mr. Ashok Garg (Represented by Advocate Prakash Shah)

- a) *They had executed delivery based transaction at the then prevailing market price and did not establish any new high or above the last traded price as alleged.*
- b) *Their trading did not have any effect in CNE in respect of price, volume and equilibrium of the market. Their dealing vis-à-vis the market volume in the scrip was diminutive so as to have any impact on the price of scrip.*
- c) *No evidence has been brought to allege and suspect to abuse of trading system by them.*
- d) *It is bald and sweeping allegation of an unaccounted income without any substance and materiality. She is regular tax payer and the terminology of accounted and unaccounted income is best understood by tax*



authorities.

- e) They do not have any link/ connection/ nexus with CNE, or its Promoter/ directors, Merchant Banker or the entities of Funding Group and Trading Group.
- f) The discretionary power under section 11 & 11B of SEBI Act is not available for routine application and it should be used only in exceptional and extraordinary circumstances since it has serious civil consequences and ramification on the reputations and livelihoods of those against whom it is directed.
- g) SEBI has not come forward with any findings of investigation and/ or cogent evidence w.r.t. any wrong doing on their part.
- h) They invested in the shares of CNE on the future prospects of the company.
- i) They had no idea about buyer of its shares of CNE since all the transactions were executed through the normal screen based trading system of Stock Exchange.
- j) They have been erroneously roped into the present proceedings merely on the basis of surmises and conjectures.
- k) The interim order was in gross violation of the basic principles of audi alteram partem. They have cited judicial pronouncements in the matters of *Painter v. Liverpool Oil Gas Light Co.* [(1836) 3 A and E 433], *A.R. Antulay v. R. S. Nayak* [(1988) 2 SCC 602].
- l) Section 11(4)(e) of SEBI Act mandates an approval from Judicial Magistrate for attachment of accounts, which is not obtained before attaching their accounts.
- m) Their sale quantity was only minuscule percentage of the total market volume in the scrip.
- n) No alert was generated by any regulatory authority including her broker, BSE and SEBI.
- o) They submitted that strict proof and compelling evidence is required for a serious charge of fraud as per the decision of Hon'ble SAT in *Parsoli Corporation vs SEBI* and the attention was also drawn to the Hon'ble Supreme Court's decision in the case of *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh*.
- p) They submitted that all the relevant documents/ evidences have to be furnished to her as per the decision of Hon'ble SAT in the case of *Amadhi Investments Ltd Vs SEBI*.

(9) Mr. Rakesh Bajaj (Represented by CA Ketan Rupani)

- a) He is not connected/ related to HPC its promoter and/ or director, Trading Group, Funding Group, Pre



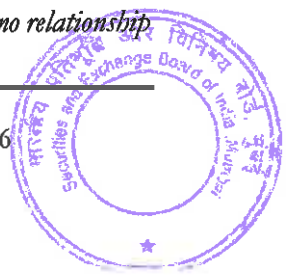
IPO Transferees, allottees of preferential issue of HPC (except for my family members).

- b) He had invested in the scrip of HPC on the advice of Mr. Ramesh Saraf, of Narayan Securities Ltd.*
- c) He is a regular investor in securities market and have never misused stock exchange mechanism*
- d) He had applied in the preferential issue of HPC through his own funds.*
- e) He sold his shares on the anonymous trading platform of the stock exchanges.*
- f) He had no association or connection with the alleged Trading Group or Funding Group or Pre -IPO transferees.*
- g) He would have sold the shares at the highest price and tried to earn maximum profit in case there was premeditated understanding, plan, device, artifice.*
- h) He had submitted that the criteria of Rs. 1 crore has been made without any basis and the figure of Rs. 1 crore is an arbitrary and irrational figure.*
- i) He had submitted that SEBI has tried to reach on a conclusion just on the basis of conjectures and surmises that he is connected to HPC and their directors/promoters and he had got some prior understanding, arrangement and purpose.*
- j) He had denied that that he has ever used the securities market system to artificially increase the volume and price of the scrip and for making illicit gains.*
- k) He had not generated any illegal gains and that he is not part of any dubious plan device or artifice as alleged.*
- l) He had denied that he has made any ill-gotten gains and converted them into genuine one.*
- m) It has been noticed that additional relief has been granted to the entities in other scrips. However he has been deprived of the same due to delay in judicial process.*
- n) He had prayed for the following*
 - may be allowed to utilize the sale proceeds received from the sale of other securities for his personal and business purposes.*
 - ex parte order and the direction therein against him be withdrawn*
 - may be allowed to buy, sell and deal in securities and also operate his demat account.*



(10) Ms. Seemen Ikram

- a) *She had executed delivery based transaction at the then prevailing market price and did not establish any new high or above the last traded price as alleged.*
- b) *Her trading did not have any effect in Esteem in respect of price, volume and equilibrium of the market. Their dealing vis-à-vis the market volume in the scrip was diminutive so as to have any impact on the price of scrip.*
- c) *No objection or grievance had been raised by any of concerned authority viz. stock broker, stock exchange and SEBI at any point of time with respect to his trading in the scrip of Esteem.*
- d) *No evidence has been brought to allege and suspect to abuse of trading system by her.*
- e) *It is bald and sweeping allegation of an unaccounted income without any substance and materiality. She is regular tax payer and the terminology of accounted and unaccounted income is best understood by tax authorities.*
- f) *She does not have any link/connection/nexus with CNE, or its Promoter/directors, Merchant Banker or the entities of Funding Group and Trading Group.*
- g) *The discretionary power under section 11 & 11B of SEBI Act is not available for routine application and it should be used only in exceptional and extraordinary circumstances since it has serious civil consequences & ramification on the repute and livelihood of those against it whom it is directed.*
- h) *SEBI has not come forward with any findings of investigation and/ or cogent evidence w.r.t. any wrong doing on their part.*
- i) *The allegation of SEBI that she indulged in fraudulent activity without any substance and material has caused great harm, loss and damage to her and her family.*
- j) *The continuation of restraint order against her is unwarranted and unjustified.*
- k) *She invested in the shares of Esteem at the relevant time based on future prospects of the Esteem Company in particular as well as the 'Organic Farm Product Industry' in general. She was advised by her brother in law Mr. Inam Ul Haq to invest in the shares of Esteem.*
- l) *Except for the purchase of the shares from Goldline International Finvest Limited, she has no relationship*



with Goldline.

- m) SEBI itself rejected to entertain disputes w.r.t off market transaction between the two entities that they are unrelated to securities market in the matter of Suresh Gupta vs. SEBI.
- n) She had no idea about buyer of its shares of CNE since all the transactions were executed through the normal screen based trading system of Stock Exchange.
- o) She would have sold all her shares in the scrip at the highest possible price in the market and exited from the scrip, had she was a party to the scheme as alleged in the order.
- p) No alert was generated by any regulatory authority including her broker, BSE and SEBI.
- q) She submitted that strict proof and compelling evidence is required for a serious charge of fraud.
- r) She submitted that all the relevant documents/ evidences have to be furnished to her as per the decision of Hon'ble SAT in the case of Amadbi Investments Ltd Vs SEBI.
- s) She is a regular investor and active in stock and commodity trading since last 40 years. The investment in Eco is a minor percentage of his total investment in securities market.
- t) She has submitted that burden of proof rests on the party who asserts and have drawn attention to the case of Hon'ble SC in the matter of Nusli Wadia Vs New India Assurance Company (2008) 3 SCC 279, while referring to section 101 of Indian Evidence Act, 1872.

(11) Mr. Jitendra Ranchoodbhai Patel (did not appear for hearing)

- a) He has not been a party in any kind of illegal and unlawful act as alleged against him.
- b) The acts and omissions on his part were not for generating fictitious LTCG so as to convert unaccounted income into accounted one with no payment of taxes as his major source of income is the salary and interest income.
- c) He has sought copies of all documents and information and records collected.
- d) I have sold the shares in trenches during the period 21.03.2014 to 04.04.2014.
- e) He has acquired 20,000 shares through preferential allotment by subscribing from his own source of money.
- f) There is a difference in the number of shares traded as per data provided by SEBI and data gathered from BSE website.



- g) *The prospectus does not contain any material or information to establish or bring on record his connection / relation with any of the entities.*

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

14. The facts and circumstances of the instant case as brought out in the *interim order*, *prima facie*, show the *modus operandi* employed by the four companies, their directors, their promoters, *preferential allottees/pre IPO transferees, Trading group and Funding group*, who made a façade of preferential allotment followed by their respective IPOs. Once the shares were listed on the stock exchange, the *Trading Group* entities started pushing up the price of the scrip through manipulative trades and increased the prices of the scrips substantially. After the expiry of the lock-in period, the *Trading Group* entities purchased shares from the *preferential allottees* and *pre-IPO transferees* at artificially increased prices. In the whole process, entities of the *Trading Group* provided a hugely profitable exit to the *preferential allottees* and *pre IPO transferees*. Consequently, the *preferential allottees* and *pre-IPO transferees* have collectively made a profit of ₹614 crore. The connection amongst the various entities across categories (companies, *preferential allottees, pre IPO transferees, Trading Group and Funding Group*) have been explained in the *interim order*. It was therefore alleged that the *preferential allottees, pre IPO transferees* acting in concert with *Funding Group* and *Trading Group* have used the stock exchange system to artificially increase volume



and price of the scrip for making illegal gains and to convert ill-gotten gains into genuine one. It is important to note that the whole scheme could not have been possible without the involvement/connivance of companies and their promoters and directors as the *preferential allotment* was the first and vital step in the whole scheme.

15. Almost all the noticees have raised common issues. Therefore, before dealing with specific replies/submissions of the noticees on merit, I deem it necessary to deal with the preliminary and common issues raised by the noticees.

Common issues raised by noticees :-

- A. Whether SEBI has jurisdiction to investigate matters related to LTCG?**
- B. Whether *interim order* has been passed in complete disregard of the principles of natural justice without giving an opportunity of hearing before passing the *interim order*?**
- C. Whether there was any requirement and urgency for passing such restraints as imposed by the interim order and whether the same results in breach of fundamental right of doing trade and business?**
- D. Whether after giving permission to these companies to issue equity through preferential allotment route and listing the shares, such an exercise can be questioned by SEBI?**
- E. Other issues raised by noticees:-**
 - I. Whether interim order without bringing out individual role of noticees in the manipulation can impose such restriction on them?**
 - II. Whether it is correct to question their intent when they have used their own funds and sold in the market in an anonymous trading platform of the exchange?**



- III. Whether not having sold the entire portion of the portfolio illustrates non-involvement of some of the noticees?
- IV. Whether BSE or SEBI failed to raise alarm bells on the unusual price movement in the scrips?
- V. Whether SEBI has adopted a discriminatory approach by excluding preferential allottees and pre IPO transferees who had not made a profit of Rs. 1 crore?
- VI. Whether SEBI requires an approval from Judicial Magistrate before attachment of accounts?

A. Whether SEBI has jurisdiction to investigate matters related to LTCG?

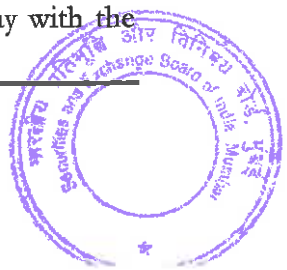
16. Some of the Noticees have contended that the primary allegation in the *ex-parte ad interim order* against them is of conversion of unaccounted income into accounted income and subsequent tax evasion which falls outside the jurisdiction of SEBI. The Noticees have also submitted that they have not 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.

B. Whether interim order has been passed in complete disregard of the principles of natural justice without giving an opportunity of hearing before passing the interim order?

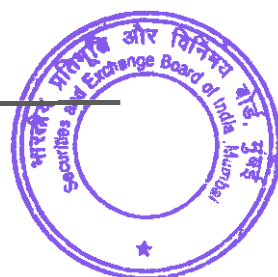
17. Some of the Noticees have contended that the *interim order* has been passed in complete disregard of the principles of natural justice as no opportunity of hearing was provided to the Noticees. In this regard, I note that the *interim order* has been passed on the basis of *prima facie* findings 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. "

18. 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 Rathi & 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."

19. I, therefore, do not find that the *interim* order is vitiated for want of a personal hearing prior to passing of the order.

C. Whether there was any requirement and urgency for passing such restraints as imposed by the interim order and whether the same results in breach of fundamental right of doing trade and business?

20. 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 livelihoods 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.

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



invoked at any stage i.e. either during pendency or on completion of inquiry or investigation. In the present case, the *modus operandi* where suspected entities were misusing the stock exchange mechanism came to light only in June 2015. Further, the *interim order* sets out the reasons and circumstances which led to the issuance of *ex-parte ad- interim directions*.

22. Another contention of the noticees is that the restraint order is in breach of their fundamental right to carry on trade and business under the Constitution of India. Article 19(1)(g) guarantees to all citizens, the right to practice any profession or to carry on any occupation, trade or business. However, clause (6) of Article 19 authorises legislation to impose reasonable restrictions on this right in the interest of general public. SEBI Act, 1992 is a special Act enacted by the Parliament conferring on SEBI the duty to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. In the present case, the restraint order has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. As noted in the *interim order*, the noticees seem to be *prima facie* involved in the manipulative scheme of preferential allotment and the noticees have therefore been restrained from accessing the securities market and dealing in securities till further directions. It is a settled law that the fundamental rights to trade ensured under the Constitution are subject to restrictions stemming out of legal requirements mandated in other statutes.

D. Whether after giving permission to these companies to issue equity through preferential allotment route and listing the shares, such an exercise can be questioned by SEBI?

23. It needs to be stated that the interim order does not find fault with the manner of issue of preferential allotment of shares but deals with the intent of the companies, promoters, preferential allottees etc. in going for a strategic preferential allotment exercise. The preferential allotment of four SME scrips being made to benefit certain identified entities at



the cost of the integrity of the whole of securities market is the thrust of the interim order.

Thus there is no merit in the above contention.

E. Other issues raised by noticees

I. Whether interim order without bringing out individual role of noticees in the manipulation can impose such restriction on them?

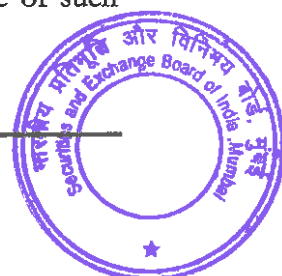
24. Upon an appreciation of the scheme as a whole, I notice that several entities and group of entities as identified in the interim order have broadly been shown to have some connection with the alleged market fraud. As stated in the earlier paragraphs, since interim order is an emergent measure taken by SEBI in the interest of investor, the issuance of such order cannot await the identification of each entities' role to the main scheme. I do not find any merit in the contention of the notice and the role of noticees would be revealed only in a detailed investigation, which will consume time at the cost of immediacy.

II. Whether it is correct to question their intent when they have used their own funds and sold in the market in an anonymous trading platform of the exchange ?

25. There have been instances of market manipulation wherein entities have deployed own funds and these manipulation have been perpetrated through the trading platform. Thus these are not valid grounds available to the noticees to challenge the interim order.

III. Whether not having sold the entire portion of the portfolio illustrates non-involvement of some of the noticees?

26. Some of the *preferential allottees/pre IPO transferees* have contended that they have sold only a percentage of their total shares allotted under preferential allotment and were still holding shares and this is a proof of their not being involved in the dubious plan / scheme. I have carefully considered these submissions but I am unable to accept them at face value as only a full investigation (which is already on) would only reveal the validity or otherwise of such contentions and hence I would not like to pre-judge the issue.



IV. Whether BSE or SEBI failed to raise alarm bells on the unusual price movement in the scrips?

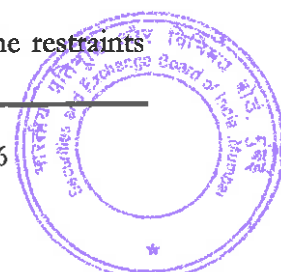
27. The thrust of interim order was not price manipulation. It was the whole scheme beginning from the preferential allotment till the exit of the preferential allottees and pre IPO transferees, by investing in the scrip of the aforesaid four companies in a strategic manner by misusing the stock exchange mechanism. Therefore, the contention raised by noticees are without merit.

V. Whether SEBI has adopted a discriminatory approach by excluding preferential allottees and pre IPO transferees who had not made a profit of Rs. 1 crore?

28. The entities have contended that SEBI had adopted a discriminatory approach by including them in *the interim order* and excluding certain other *preferential allottees* and the *pre IPO transferees* from the purview of the same as they have not made a profit of ₹1 crore or more. In this regard, I find it important to mention that the *interim order* clearly mentioned that a detailed investigation in the matter is in progress. The fact that certain *preferential allottees* and *Pre IPO Transferees* have been left out in the *interim order* does not signify that they are outside the scope of SEBI's investigation or have been exonerated. At the stage of the *interim order*, directions were issued against entities whose role/involvement in the entire scheme was *prima facie* observed in light of the facts and circumstances at that stage. It is pertinent to clarify that appropriate action in accordance with the provisions of law will be initiated against entities (including the *Preferential Allottees* and *Pre IPO Transferees*) who are found to have played a role in the plan / scheme / design employed in this case.

VI. Whether SEBI requires an approval from Judicial Magistrate before attachment of accounts?

29. The interim order has the effect of freezing the demat account by virtue of the restraints



imposed on buying, selling or dealing in securities, either directly or indirectly, in any manner. There is no attachment of bank account for which an approval of Judicial Magistrate is required.

Directors

30. I now proceed to deal with the submissions of Mr. Arun Kumar Gupta, who was Independent Director of HPC. He contended that he was director during the period from 01/ 10/ 2011 to 04/ 10/ 2013 and he has never dealt in even a single share of the said companies. However, I note that during the period when preferential allotments were made, he was a director in the company. The position of a 'director' in a company comes along with responsibilities and compliances under law associated with such a position, which have to be fulfilled by such director. Company being an artificial person can only act through its directors. Being part of the board, he may have been responsible for the affairs and conduct of the company, when the preferential allotment was made. In view of this, I do not find it appropriate to relax the directions issued in the interim order against Mr. Arun Kumar Gupta as he appears to have been in the knowledge of the activities of the company.
31. From the extract of the Annual Report of CNE submitted to BSE for the FY 2012-13, it is noted that Mr. Dinesh Kumar Jindal was an Independent director in CNE and chairman of the Audit Committee. He has contended that his signatures were forged as the Audit Committee Chairman in Form A of Annual Report of 2012-13. However, he has failed to submit any documentary evidence for the action taken by him against the companies, promoters/directors for alleged forging his signature. Being part of the board and chairman of the audit committee, I do not find it suitable to relax the directions issued in the interim order against Mr. Dinesh Kumar Jindal 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.



32. Mr. Jitendra Ranchodbhai Patel has raised the query of discrepancy. At this point the limited question that arises for my consideration is whether the interim order need to be confirmed against the said noticee or not. The discrepancy in data can be addressed after the investigation is concluded. This cannot be a ground material enough to have a bearing on the findings of the *interim order*.

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

34. As the 19 noticees (covered under this order) have failed to give any plausible reasoning/explanation, at this stage, for their acts and omissions as described in the *interim order* and have not been able to make out a *prima facie* case for revocation of the *interim order*, I reject the prayers of such noticees for setting aside the *interim order* or for complete removal of restraints imposed by it. I, therefore, do not see any reason to change or revoke the *ad interim* findings as against them in the *interim order*. The list of these noticees is as under:

S. No.	Name of Entities	PAN
1	Mohammad Anwar	AADPM9208K
2	Naz Shazia	BBWPS2176R
3	Ahmad Sadat	AABPA7646R
4	Ajay Kumar Katta	ACXPK2323H
5	Poonam Kansal	AICPK7883R



6	Ashvin Verma	AKFPV6256L
7	Sunila Rai Verma	ASPPV7875F
8	Dinesh Kumar Jindal	AAIPJ3373K
9	Arun Kumar Gupta	AAKPG5996K
10	Seemeen Ikram	AABPI1183M
11	Tarannum Aamer	AEHPT6622C
12	Mohammad Aamer	ADAPA8647A
13	Ashok Garg	ABVPG2657B
14	Gaurav Arya	ACDPA3515B
15	Neeru Ashish Garg	AHIPG6452D
16	Naveen Gupta	AALPG0528Q
17	Manvi Goenka	AAAPA2152R
18	Rakesh Bajaj	AAKPB9948E
19	Jitendra Ranchhodbhai Patel	ABXPP2739D

35. 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 29, 2015 as against all the 19 Noticees mentioned above, 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;

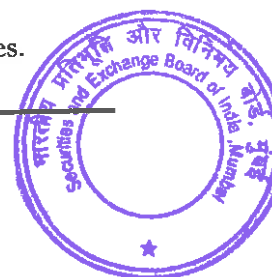


- (c) Deal in Debt/Government Securities;
- (d) Invest in ETF
- (e) Avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.;
- (f) Tender / sell the shares lying in their demat accounts or in any open offer/delisting offer under the relevant regulations of 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 35 (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.



36. The above reliefs shall not be available to Ashvin Verma and Sunila Rai Verma, in view of their specific request in their reply dated October 10, 2015 and submissions during the personal hearing.
37. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.



G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

