

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 24.04.2018

Date of Decision : 28.06.2018

Appeal No. 303 of 2016

Pratik Minerals Pvt. Ltd.
3/A, Laxmi Colony,
Nava Vas Rakhiyal Road,
Ahmedabad – 380 002.

.....Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. J. J. Bhatt, Advocate with Ms. Rinku Valanju and Ms. Hiral Shah,
Advocate for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani,
Ms. Vidhi Jhawar and Mr. Nikhil Ratti Kapoor, Advocates i/b The Law
Point for the Respondent.

**With
Appeal No. 306 of 2016**

1. Shri Hiralal Popatlal Shah
Since deceased through
Sarla Hiralal Shah,
Wd/o. Hiralal Popatlal Shah

2. Sarlaben Hiralal Shah

3. Meenaben A Shah

Tower-2, 2nd Floor, Flat No. B,
Centre Point flats, Panchvati,
Ambawadi, Ellisbridge,
Ahmedabad – 380 006.

.....Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. J. P. Sen, Senior Advocate with Mr. Shyam Shelat, Advocate i/b Shelat Associates for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani, Ms. Vidhi Jhawar and Mr. Nikhil Ratti Kapoor, Advocates i/b The Law Point for the Respondent.

**With
Misc. Application No. 345 of 2017
And
Appeal No. 374 of 2017**

1 Rudra Securities & Capital Ltd.
2/2B, Centre Point Flats,
Panchwati, Ambawadi, Ellisbridge,
Ahmedabad – 380 006.

2 Mr. Ketan D. Sorathiya
Library Chowk, Una,
Junagadh – 362 560

3 Mr. Nileshkumar T. Kava
Luhar Chowk, Una
Junagadh – 362 560

4 Mr. Vipul Shantilal Trivedi
Kolivado, Una
Junagadh – 362 560

5 Mr. Manish Muchhala
Opp. Javahar Colony,
Anjar Road, Una
Junagadh – 362 560

.....Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju and Ms. Hiral Shah, Advocate for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani, Ms. Vidhi Jhawar and Mr. Nikhil Ratti Kapoor, Advocates i/b The Law Point for the Respondent.

**With
Misc. Application No. 346 of 2017
And
Appeal No. 375 of 2017**

1. Vashi Constructions Pvt. Ltd.
2/2B, Centre Point Flats,
Panchwati, Ambawadi, Ellisbridge,
Ahmedabad – 380 006.

2. Ms. Bhavana Rajesh Shah
C-201, Silver Leaf Society,
Near Big Bazar, Akurli Road,
Kandivali (East),
Mumbai – 400 101.

3. Mr. Rajesh Chandrakant Shah
C-201, Silver Leaf Society,
Near Big Bazar, Akurli Road,
Kandivali (East),
Mumbai – 400 101.

.....Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju and Ms. Hiral Shah,
Advocate for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani,
Ms. Vidhi Jhawar and Mr. Nikhil Ratti Kapoor, Advocates i/b The Law
Point for the Respondent.

**With
Misc. Application No. 347 of 2017
And
Appeal No. 376 of 2017**

1. Dhanlaxmi Lease Finance Ltd.
3/A, Laxmi Colony, Navo Vas,
Rakhiyal Road,
Ahmedabad – 380 006.

.....Appellants

2. Mr. Bharat Ratilal Shah
5th Floor, Nupur Apt.,
Uttamnagar, Maninagar,
Ahmedabad – 380 006.

3. Mr. Bipin Ratilal Shah
3/A, Laxmi Colony, Navo Vas,
Rakhiyal Road,
Ahmedabad – 380 006.
4. Mr. Girish Gaturbhai Doshi
945-Bhatni Pole,
Near Ramkrishna Mill, Gomtipur,
Ahmedabad – 380 021.

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju and Ms. Hiral Shah,
Advocate for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani,
Ms. Vidhi Jhavar and Mr. Nikhil Ratti Kapoor, Advocates i/b The Law
Point for the Respondent.

With
Misc. Application No. 58 of 2018
And
Appeal No. 62 of 2018

Robinson Worldwide Trade Ltd.
(now known as Sun and Shine Worldwide Ltd.)
403, Sanjay Tower,
Opp. C.N. Vidyalaya,
Ambavadi,
Ahmedabad – 380 015.

.....Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. Pakash Shah, Advocate with Ms. Rinku Valanju and Ms. Hiral Shah,
Advocates i/b R.V. Legal for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani,
Ms. Vidhi Jhavar and Mr. Nikhil Ratti Kapoor, Advocates i/b The Law
Point for the Respondent.

**With
Misc. Application No. 76 of 2018
And
Appeal No. 79 of 2018**

Exdon Trading Company Ltd.
C-10, Sahar Roy Apt. CHS Ltd.
Opp. Sahar Cargo Complex,
Andheri (E),
Mumbai – 400 099.

.....Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. Pakash Shah, Advocate with Ms. Rinku Valanju and Ms. Hiral Shah,
Advocates i/b R.V. Legal for Appellants.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Pulkit Sukhramani,
Ms. Vidhi Jhavar and Mr. Nikhil Ratti Kapoor, Advocates i/b The Law
Point for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Dr. C. K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member

1. These seven appeals have been filed challenging the order passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) on August 12, 2016. By the said order several entities, including the appellants herein, have been held to have violated certain provisions of SEBI Act, 1992, Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and / or Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Accordingly, various directions such as restraint from dealing in the securities market directly or indirectly / disgorgement of the

unlawful gains made / direction to make an open offer as detailed therein have been issued.

2. Facts relevant to the appeals are as follows:-

3. Appellants are charged with aiding and abetting a fraudulent scheme launched by a company by the name Platinum Corporation Ltd. ('PCL' for short) and its directors / promoters. Impugned order has been passed against several entities based on an investigation conducted by SEBI relating to buying, selling and dealing in the scrip of PCL. PCL was incorporated on July 17, 1992 in the name of Kanugo Lease and Investment Ltd. Its shares were listed on BSE on January 9, 1997. Between July 20, 2005 and September 15, 2006 PCL made a number of misleading corporate announcements which led to increase in its share price and substantial increase in the volume of trading in its shares. Promoters of PCL had transferred shares in off-market to related entities who in-turn sold the shares in the market after these corporate announcements and made unlawful gains to the extent of Rs. 12 crore at the cost of innocent investors.

4. Investigation also revealed that the company and its directors misled investing public by providing incorrect information on promoters' shareholding for 11 quarters (i.e. from March 2005 till September 2007) to BSE. Further, the company failed to make relevant disclosures regarding changes in shareholding pattern as required by the relevant provisions of SAST Regulations, 1997. It was also observed that Pratik Rameshchandra Shah, one of the directors, who was managing the affairs of PCL received 1 crore shares from Mr. Anand Ramanlal Trivedi on June 28, 2005, which constituted 9.34% of the equity capital of the company. However, Pratik Rameshchandra Shah did not disclose his acquisition of shares to the company and to the stock exchange.

5. Investigation further revealed that PCL made fraudulent preferential allotment of 290 lakh shares to seven connected entities /persons without real inflow of funds from the preferential allottees. The allottees of the aforesaid preferential issue, four of whom were Directors of the company, were connected to one another and were acting in concert, acquired 21.32% of the post issue paid up capital of the company. However, they failed to make open offer as prescribed by SAST Regulations, 1997.

6. In view of the aforesaid findings in the investigation, SEBI initiated proceedings under Section 11 and 11B of the SEBI Act, 1992 against PCL and 39 entities including its directors / promoters and other entities connected / related to the directors / promoters of the PCL for violation of Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a) to 3(d), 4(1), 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 and Regulation 8(3), and Regulation 10 of SAST Regulations, 1997.

7. The details of the 40 entities to whom SCN was issued by SEBI are as under:-

Sr. No.	Name of the Noticees	Relationship Details
1	Platinum Corporation	Company (PCL)
2	Mr. Pratik R. Shah	Director of PCL (Noticee no. 1) and Hirak Biotech (Noticee no. 24)
3	Mr. Dhrumal Kishor Vaidya	Director (also listed as a promoter of PCL as per the last shareholding pattern reported to BSE)
4	Mr. Anindo Achinto Banerjee	Director (also listed as a promoter of PCL as per the last shareholding pattern reported to BSE)
5	Mr. Jignesh D. Shah	Director of PCL
6	Mr. Jayesh D. Shah	Director of PCL
7	Ms. Nikita B. Dave	Director of PCL
8	Vashi Constructions Pvt. Ltd.	Ashok Shah (Noticee no. 9), Hiralal Shah (Noticee no. 28), Bhavana Shah (Noticee no. 10), and Rajesh Shah (Noticee no. 11) are directors.
9	Mr. Ashok H. Shah	Signed the tripartite agreement on behalf of PCL (as its director) with NSDL. He is also a director of Vashi

		Constructions (Noticee no. 8), Induram Developers (Noticee no. 29) and Corporate Allianz (Noticee no. 27). In addition, he managed Exdon Trading Company Ltd. (Noticee no. 26) as its Director
10	Ms. Bhavana Rajesh Shah	Director, Vashi Constructions and Sister of Ashok Shah (Noticee no. 9)
11	Mr. Rajesh C. Shah	Director, Vashi Constructions (Noticee no. 8) and husband of Bhavana Shah (Noticee no. 10)
12	Ms. Neha Ravindrakumar Shethwala	Authorized signatory for Vashi Constructions (Noticee no. 8), Rudra Securities (Noticee no. 13) and Dhanlaxmi Lease Finance (Noticee no. 17)
13	Rudra Securities & Capital Ltd.	Ketan Sorathiya (Noticee no. 14), Nileshkumar Kava (Noticee no. 15) and Vipul Trivedi (Noticee no. 16) are directors.
14	Mr. Ketan Dineshchandra Sorathiya	Director of Rudra Securities (Noticee no. 13)
15	Mr. Nileshkumar Tribhovandas Kava	Director of Rudra Securities (Noticee no. 13)
16	Mr. Vipul Shantilal Trivedi	Director of Rudra Securities (Noticee no. 13)
17	Dhanlaxmi Lease Finance Ltd.	Bharat Shah (Noticee no. 18), Bipin Shah (Noticee no. 19) and Girish Doshi (Noticee no. 20) are directors.
18	Mr. Bharat Ratilal Shah	Director of Dhanlaxmi Lease Finance (Noticee no. 17)
19	Mr. Bipin Ratilal Shah	Director of Dhanlaxmi Lease Finance (Noticee no. 17)
20	Mr. Girish Gaturbhai Doshi	Director of Dhanlaxmi Lease Finance (Noticee no. 17)
21	Sarang Chemicals Ltd.	Lalitkumar Rathod (Noticee No. 22) and Dinkar Shreemali (Noticee no. 23 and one of the directors of PCL (Noticee no. 1) and Hirak Biotech (Noticee no. 24) are directors of Sarang Chemicals (Noticee no. 21)
22	Mr. Lalitkumar Kantilal Rathod	Director of Sarang Chemicals (Noticee no. 21)
23	Mr. Dinkar Bhanuprasad Shreemali	Director of PCL, Hirak Biotech (Noticee no. 24) and Sarang Chemicals (Noticee no. 21)
24	Hirak Biotech Ltd.	Dinkar Shreemali (Noticee no. 23 and director of PCL (Noticee no. 1) is a director
25	Mr. Anand R. Trivedi	Son of Ramanlal Trivedi (Noticee no. 39 – promoter of PCL (Noticee no.1)) and also Director of Shalibhadra Steel (Noticee no. 36), Shankeshwar Metals (Noticee no. 37) and Siddhivinayak Tradelink (Noticee no. 38)

26	Exdon Trading Company Ltd.	Managed by Director, Ashok Shah (Noticee no. 9-who signed the tripartite agreement on behalf of PCL (Noticee no. 1) (as its director)
27	Corporate Strategic Allianz Pvt. Ltd.	Ashok Shah (Noticee no. 9) and Hiralal Shah (Noticee no. 28) are directors.
28	Mr. Hiralal Popatlal Shah (Deceased)	Director of Vashi Constructions (noticee no. 8), Induram Developers (Noticee no. 29) and Corporate Allianz (Noticee no. 27). Father of Ashok Shah (Noticee no. 9, who signed tripartite agreement on behalf of PCL (Noticee no. 1)
29	Induram Developers Pvt. Ltd.	Ashok Shah (Noticee no. 9) and Hiralal Shah (Noticee no. 28) are directors.
30	Ms. Meena Ashok Kumar Shah	Wife of Ashok Shah (Noticee no. 9)
31	Ms. Meeta Bipin Kumar Shah	Wife of Bipin Shah (Noticee no. 19), Director of Parvati Minerals (Noticee no. 32 and Pratik Minerals (Noticee No. 33)
32	Parvati Minerals Pvt. Ltd.	Managed by Bharat Shah (Noticee no. 18), Bipin Shah (Noticee no. 19) and Meeta Shah (Noticee no. 31)
33	Pratik Minerals Pvt. Ltd.	Managed by Bharat Shah (Noticee no. 18), Bipin Shah (Noticee no. 19) and Meeta Shah (Noticee no. 31)
34	Robinson Worldwide Trade Ltd. (presently known as Sun and Shine Worldwide Ltd.)	Managed by Ramanlal Trivedi (Noticee no. 39) and promoter of PCL (Noticee no. 1)
35	Ms. Sarlaben Hiralal Shah	Mother of Ashok Shah (Noticee no. 9, who signed tripartite agreement on behalf of PCL (Noticee no. 1)
36	Shalibhadra Steel Pvt. Ltd.	Anand Trivedi (Noticee no. 25 and son of Ramanlal Trivedi (Noticee no. 39)-promoter of PCLs (Noticee no. 1) is a director.
37	Shankeshwar Metals Pvt. Ltd.	Anand Trivedi (Noticee no. 25) (son of Ramanlal Trivedi –promoter of PCL) (Noticee no. 1) is a director.
38	Siddhivinayak Tradelink Pvt. Ltd.	Anand Trivedi (Noticee no. 25) (son of Ramanlal Trivedi – (Noticee no. 39 and promoter of PCL is a director.
39	Mr. Ramanlal N. Trivedi	Promoter of PCL (Noticee no. 1), Director of Robinson Worldwide (Noticee no. 34)
40	Mr. Manish Muchhala	Director of Rudra Securities (Noticee no. 13)

8. A common show cause notice dated September 23, 2013 was issued separately to PCL and the other 39 aforementioned Noticees to show cause as to why directions under Section 11, 11(4) and 11B of the SEBI Act should not be issued against them for the alleged violations of provisions of Section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), (k) and (r) of the PFUTP Regulations, 2003 and provisions of Regulation 8(3) and Regulation 10 of SAST Regulations, 1997.

9. After following due process like replies, personal hearing etc. impugned order was passed on August 12, 2016. Apart from giving a reply to the show cause notice by one of the directors of PCL i.e. noticee no. 4, Anindo Achinto Banerjee, neither the company PCL nor any of its directors participated in the proceedings before WTM. Further neither the company nor any of their six directors are on appeal before us.

10. There are 18 appellants before us belonging to two categories; 1) those who have been charged with aiding and abetting the promoters of PCL in transferring promoter shareholding off market and thereafter offloading large number of shares in the market which they received mainly thorough off-market dealings from the promoters/directors of PCL and thereby making unlawful gains, 2) some of them also got preferential allotment of shares from PCL, along with 4 of its Directors. Those in category 1 are restrained from the securities market for the period of three years and have been directed to disgorge their unlawful gains. In addition to the above directions, those in the second category have been restrained for a further period of five years and directed to make an open offer for violation of SAST Regulations, 1997.

11. Accordingly, appellants in appeal Nos. 374, 375 and 376 of 2017 have been debarred from the securities market for three years and disgorgement of specified amount alongwith interest for PFUTP violations and debarment of five years and direction to make a public announcement to acquire the shares of PCL in terms of Regulation 10 of SAST Regulations for fraudulent preferential allotment of shares of PCL. In other appeals (appeal nos. 303 and 306 of 2016 and 62 and 79 of 2018) only three years restraint from securities market and disgorgement of unlawful gains have been ordered for PFUTP violations. In case of appellants where both 3 years and 5 years restraint have been imposed that period would run concurrently.

12. The specific facts relating to each appellant are as follows:-

(i) Appeal No. 303 of 2016:-

(a) The basic charge against the appellant is that they have connived and conspired with PCL and its promotes / directors in hoisting the scheme of making the scrip liquid and thereafter selling them in the market and thereby made unlawful gains. The connection of the appellant to PCL is established through cross-connection between different entities. The appellant is managed by Bharat Shah, Bipin Shah and Meeta Shah. Bharat Shah and Bipin Shah are brothers and are directors of Dhanlaxmi Lease Finance (Appellant in Appeal No. 376 of 2017) and Meeta Shah is the wife of Bipin Shah. The Mobile No. 09824019596 given in the KYC details of Bharat Shah with the depository participant was that of Ashok Shah, one of the past

promoter / director of PCL. This same mobile number is mentioned in the KYC details of Bipin Shah also. Ashok Shah was a director of PCL who is also director of Vashi Construction Pvt. Ltd., Induram Developers, Corporate Strategic Allianz Ltd. and Exdon Trading all of whom have been found guilty in this impugned order. The appeal of Corporate Strategic Allianz Ltd. has been dismissed by this Appellate Tribunal vide order dated February 1, 2018.

- (b) Pratik Minerals Ltd. received large quantity of shares from promoters and promoter related entities of PCL including 20 lakh shares from Parag Shah, 10 lakh shares from Preeti Bharat Ratilal, 15 lakh shares from Shanti Tradelink Pvt. Ltd. All these entities were found guilty in adjudication orders passed by SEBI which was upheld by this Appellate Tribunal.
- (c) Accordingly, there is sufficient documentary connection to show the appellants' connection to the promoters and promoter group entities of PCL and by receiving shares from such connected entities off market and thereafter, after the share price was raised through misleading corporate announcements by PCL and its directors, the appellants off loaded the entire 35 lakh shares and made a net profit of Rs. 46,74,344/-.

(ii) Appeal No. 306 of 2016:-

- (a) There are 3 appellants in this appeal. Appellant No. 1 is the father of Ashok Shah and is also a director of Vashi Construction, Induram Developers and Corporate Strategic Allianz. Sarlaben Shah and Meenaben Shah, Appellant Nos. 2 and 3 respectively are the wife and daughter-in-law of Appellant No. 1.
- (b) Appellant No. 1 received 10,500 shares from Parag Shah (promoter of PCL) on October 18, 2005. He also received 1,31,368 shares from Galaxy Broking. He also received 2,48,082 shares from Anand Trivedi. Along with the shares he was holding prior to October 2005, he off loaded 18,34,450 shares and made an unlawful gain of Rs. 25,11,364/-. Appellant No. 2 sold 15 lakh shares in the market and made a profit of Rs. 29,03,638/- and Appellant No. 3 also off loaded 15 lakh shares and made a profit fo Rs. 26,86,610/-.

(iii) Appeal No. 374 of 2017:-

- (a) Through off market transactions Appellant No. 1 received 25 lakh shares from Jayesh Shah, promoter of PCL. The address of Appellant No. 1 prior to November 11, 2008 was the residential address of Ashok Shah a former director of PCL and director of a few entities that have been found to be connected to PCL in this impugned order. Appellant No. 2 to 4 were

the directors of Rudra Securities and Capital Ltd. and were in-charge of its day-to-day affairs. Appellant No. 5 was the director of Rudra Securities & Capital Ltd. during the period of off loading all shares in the market i.e. between November 30, 2006 and February 14, 2007 and was responsible for its day-to-day affairs.

- (b) Except Appellant No. 5 all others were beneficiaries of the preferential allotment made by PCL. The Appellant No. 1 off loaded 25 lakh shares it received from Jayesh Shah and made a profit to the tune of Rs. 21,59,971/-. Appellant No. 1 was allotted 50 lakh shares of PCL as preferential allotment at the rate of Rs. 1.25 per share. These shares were pledged with banks as collateral securities for loan taken by PCL and its group entities. Accordingly, the Appellant No. 1 have been debarred for 3 years for conniving and conspiring with PCL and concurrent debarment of another 5 years for its role in the fraudulent preferential allotment; disgorgement for the unlawful profit made of Rs. 21,59,971/- with 12% interest till payment and a combined public announcement, along with PACs to acquire the shares of PCL under Regulation 10 of SAST Regulations. Appellant Nos. 2, 3 and 4 have been debarred from the market for 5 years for their role in the preferential allotment and Appellant No. 5 have been debarred for 3 years for his role in conniving and conspiring with PCL.

(iv) Appeal No. 375 of 2017:-

- (a) The 3 appellants in this appeal are the Company Vashi Construction Pvt. Ltd., Bhavana Rajesh Shah and Rajesh Chandrakant Shah, both directors of Appellant No. 1. Vashi Construction Pvt. Ltd. received 10 lakh shares off market from Tushar Shah, promoter of PCL and 10 lakh shares from Sonika Granites Pvt. Ltd., one of the connected entities. Bhavana Rajesh Shah is the sister of Ashok Shah (former director of PCL) and wife of Rajesh C. Shah. Neha Shethwala is the authorized signatory for Vashi Construction Pvt. Ltd., Rudra Securities & Capital Ltd. and Dhanlaxmi Lease Finance. Ashok Shah was a former director of PCL and Vashi Construction Pvt. Ltd., along with his father Hiralal Shah.
- (b) Vashi Construction Pvt. Ltd off loaded in the market entire 20 lakh shares and made a profit of Rs. 23,89,873/-. They got 50 lakh shares of PCL under the preferential allotment and pledged the same with the bank as collateral for loans taken by PCL and its group entities. Accordingly, Appellant No. 1 has been debarred for 3 years for conniving and conspiring with PCL and for a concurrent 5 years for the fraudulent preferential allotment and disgorgement of Rs. 23,89,871/- with 12% interest and public announcement to acquire shares along with PACs.

Appellant No. 2 and 3 have been debarred for 5 years for their role in the preferential allotment.

(v) Appeal No. 376 of 2017:-

- (a) There are 4 appellants in this appeal wherein Appellant No. 1 is the company and Appellant Nos. 2 to 4 are its directors. The directors have been imposed with 3 and 5 years debarment from the securities market for conniving and conspiring with PCL and for the fraudulent allotment of shares of PCL respectively and disgorgement of the unlawful gains made in off loading the shares in the market acquired through off market dealings from the promoters of PCL. Appellant No. 1 has been punished for its role in the fraudulent preferential allotment with 5 years debarment from the securities market and the direction to make public announcement for open offer.
- (b) The directors of the company are Bharat Shah, Bipin Shah and Girish Joshi and are connected to PCL. The mobile number 09824019596 belonging to Ashok Shah are the contact number given in their KYC details for DP account. Ashok Shah, in turn, was a former director of PCL and director of Vashi Construction Pvt. Ltd., Induram Developers and Corporate Strategic Allianz Ltd. and manages Exdon Trading Company Ltd., all related entities in the impugned order. Bharat Shah (Appellant No. 2) received 20 lakh shares from Sbhudraben Ramalal Patel and 15.40 lakh shares from

Anand Trivedi (son of Ramanlal Trivedi who was the former director of PCL and also a director of Robinson Worldwide and CMD of Cartesian Computers). Bharat Shah also received 20 lakh shares from Tushar Shah (promoter of PCL) and 8 lakh shares from Bipin Shah. Appellant No. 4 Girish Joshi received 20 lakh shares from Jayesh Shah (promoter of PCL) and 4 lakh shares from Bipin Shah. Dhanlaxmi Lease Finance Ltd. is one of the beneficiaries of the preferential allotment. Bharat Shah off loaded 75,72,338 shares in the market and made a gain of Rs. 86,92,786/-. Bipin Shah off loaded 23,15,476 shares and made a gain of Rs. 31,88,802/-. Girish Joshi off loaded 11,41,516 and made a profit for Rs. 4,71,897/-. Dhanlaxmi Lease Finance Ltd. received 40 lakh shares of PCL as part of the preferential allotment and these shares were pledged with bank as collateral in respect of loan taken by PCL and its group companies.

(vi) Appeal No. 62 of 2018:-

(a) Ramanlal Trivedi, former director of PCL was the director of appellant company at the relevant time. He was also the CMD of Cartesian Computers with whom PCL had announced tie-ups and related misleading corporate announcements and Cartesian Computers is the wholly owned subsidiary of Alps BPO with whom also PCL announced tie-ups which is also a misleading corporate announcement. As per the KYC details,

address of the appellant company is the same address of Induram Developers which is managed by Ashok Shah.

- (b) During 2001-05 appellant received 42,52,220 shares of PCL from Lakshya Securities and Credit Holding, one of the connected entities. On August 17, 2005 appellant received 75 lakh shares from Ashok Shah. On September 2, 2005 appellant received 5 lakh shares from Jayesh Shah (promoter of PCL). On the same date appellant received 80 lakh shares from Anand Trivedi and 40 lakh shares from Manish Ashokbhai and on September 13, 2005 appellant received 40 lakh shares from Meena Shah. On September 19, 2005 appellant received 34.5 lakh shares from Meeta Bipin. All the above stated shares appellant received are off market and they are connected / related entities as explained in the impugned order. Appellant off loaded 27,86,075 shares and made an unlawful gain of Rs. 4,30,93,147/-.

(vii) Appeal No. 79 of 2018:-

- (a) Ashok Shah was the director of Exdon Trading at the relevant time. Appellant received 40 lakh shares of PCL from Meena Ambani on August 29, 2005, 40 lakh shares from Preeti Bharkumar Shah on September 6, 2005 and 20.5 lakh shares from Parag Shah on November 17, 2005 and 9,43,502/- shares from an unspecified account. They sold total 96,90,000 shares and made a total unlawful gain of Rs. 1,76,76,340/-.

- (b) The connection between the various entities related to the appellants is clearly explained in the table in para 7 of this order.

13. Shri J. J. Bhatt, Learned Counsel representing appellants in Appeal no. 303 of 2016, 374, 375 and 376 of 2017 submitted that the restraint order under Section 11/11B of SEBI Act, 1992 has been used as a punishment which is not the intention of these Sections and as such the impugned order is in violation of the SEBI Act; same legal provisions (both the Section 12A(a), (b), (c) of SEBI Act and Regulation 3(b), (c), (d) of PFUTP Regulations) have been used in amplifying the violations; those who have transferred shares in off-market have been subjected to only monetary penalty through adjudication orders while those who have sold shares in the market have been subjected to Section 11/11B proceedings, debarment and disgorgement thereby the impugned order suffers from inequitable and unfair approach in imposition of penalties; undue delay (more than 9 years) in the proceedings has caused irreparable damage to the appellants; the role and involvement of the appellants in the alleged conspiracy has not been proved; the appellants have no role in the corporate announcements made by the company and moreover, announcements have only a short shelf life and, therefore, sales beyond a few days of the corporate announcements are not affected by the corporate announcements; sales on several dates had no connection with announcements, treatment of unlawful gains is vitiated since off-market sales/purchases are not illegal, market prices were not taken into consideration in deciding profits and appellants connection/role vis-à-vis the alleged manipulation with other parties is not proved; there was no provision for imposing interest and no show cause notice was issued for the same.

14. Regarding Appeal nos. 374, 375 and 376 of 2017, the Learned Counsel Shri J. J. Bhatt further submitted that in these appeals the appellants in addition to the 3 year restraint and disgorgement, have been also directed to make an open offer on the basis of the findings that the appellants were beneficiaries of the preferential allotment, alongwith the four directors of the PCL. However, since the preferential allotment has not been effected i.e. neither the shares have been received by the appellants, nor it is listed on the stock exchange, it was a vitiated issue. Therefore, directing the appellants to jointly and severally with the four directors of PCL go for a public announcement for open offer on the basis of a vitiated / illegal preferential allotment made by PCL is without any legal basis. Rather it is like sanctifying an illegal issue of shares made by PCL. Further, the company was delisted by BSE on November 29, 2017. Therefore, it is now impossible to implement an open offer even if it is held that the direction for open offer is legally valid. Moreover, on the same matter, a monetary penalty of Rs. 20 lakh on the same allottees (three appellants herein and the four directors of PCL) had been imposed by the adjudicating officer of SEBI vide order dated January 19, 2012 on joint and several basis, which was upheld by this Appellate Tribunal by its order dated April 8, 2013 and the penalty has been paid.

15. Shri Bhatt, further submitted that appellants in Appeal no. 374 of 2017 and in Appeal no. 376 of 2017 did not receive 25 lakh shares and 20 lakh shares respectively from Jayesh Dineshbhai Shah, one of the directors of PCL, as held in the impugned order. The appellants received the shares off-market from one Jayesh Sumesh Shah, an investor who is neither a director nor a promoter of PCL. The appellants received the shares from Jayesh Sumesh Shah, from his demat account no. 30308092. Therefore, the

entire premise in the impugned order that the appellants in these appeals were connected to the promoters of PCL because of their off-market dealing with promoters of PCL and also in preferential allotment are untrue and hence the very basis of the finding in the impugned order is invalid.

16. Relying on two judgments of this Appellate Tribunal in the matter of M/s. Opee Stock Link Ltd. & Anr. vs. SEBI (Appeal no. 20 of 2009) dated December 30, 2009 and in the matter of Libord Finance Ltd. vs. SEBI (Appeal no. 37 of 2008) dated March 31, 2008 he emphasized that the impugned order is vitiated because of undue delay and by using Sections 11/11B of the SEBI Act as a punishment which is held in the cited orders as illegal and unsustainable.

17. Shri J. P. Sen Learned Senior Counsel for the appellants in appeal no. 306 of 2016 submitted that appellant no. 1 in this appeal namely; Hiralal Popatlal Shah expired on October 8, 2012. Appellant no. 1 had no connection with PCL except that his son Ashok Shah was a past Director of PCL. Even Ashok Shah left PCL as a Director in the year 2002. The appellant Nos. 1, 2 and 3 received 1, 45,000, 1,50,000 and 1,50,000 shares each from one Shri Mahendra Daulatrai Ganatra as consideration/refund for the shares of Renco Gears Ltd. which the appellants had given to Shri Ganatra in September 1993. Instead of paying in money/cash, the above stated quantities of shares of PCL were given to these three appellants in 1999. This is stated in the appeal memo as well as in terms of two similar affidavits submitted by Shri Ganatra signed on October 4, 2016 and November 11, 2017. It is clearly stated in these affidavits that the specified quantity of shares of PCL were transferred to the appellants in lieu of the shares given to Shri Ganatra in 1993 by these 3 appellants and the shares of PCL was given to the appellants at the rate of Rs. 40/- per share. Therefore,

the appellants were holding these shares received from an undisputed transaction for several years since 1999. As such the entire order is vitiated in the absence of any connection with PCL. All these three appellants have been debarred from the securities market for 3 years. Appellant no. 2, Sarlaben Hiralal Shah is wife of Hiralal Shah and appellant no. 3 is daughter in law of appellant no. 1. They have no connection whatsoever with PCL or its promoters / directors except that they are related to Ashok Shah, a past director of PCL. All sales made by the appellants are several years after the Ashok Shah left PCL and only in January- February 2007 months after the alleged false corporate announcements; receiving shares from some parties allegedly connected to the PCL is not a ground for linking the appellants to the company or its promoters since shares were received in normal course of business and its consideration paid and as such there is nothing illegal or fraudulent.

18. Regarding appellants no. 2 and 3 in appeal no. 306 of 2016 Shri Sen further submitted that apart from being connected to Hiralal Shah as wife and daughter-in-law or to Ashok Shah as mother and wife respectively these appellants have no connection with either PCL or with any other companies. As such, it is inexplicable in what way these appellants are liable for the conspiracy allegedly hatched by PCL and some other entities and why they should be disgorged their normal gains earned through normal business transactions of selling shares which they have been holding for several years (since 1999).

19. Shri Prakash Shah, Learned Counsel appearing on behalf of appellants in appeal no. 62 and 79 of 2018, submitted as follows: Appellants in both these appeals have been charged with aiding and abetting the fraudulent scheme and, therefore, three years debarment from the

securities market and disgorgement of the illegal gains made by means of offloading the shares received off-market after various corporate announcements. There has been inordinate delay in issuing this order; disgorgement is done arbitrarily since all the shares sold during the investigation period is not treated as illegal and the effect of corporate announcement is for a few days only and illegal gain should have been calculated only for trades done during those few days; shares bought between corporate announcements should not have been included for calculating illegal gains; while categorizing some sales as not illegal the correct position relating to appellants sales dates was not taken; the inability to produce purchase price etc. was due to passage of time since documents need to be preserved only for 8 years under Companies Act; and as such average market price should have been taken as purchase price instead of arbitrarily taking Rs. 1 per share; connection of Ramalal Trivedi (director of the appellant) to PCL because of his past association during March 2001 – September 2003 cannot be a ground for establishing association with PCL during 2005-2007. He also added that in respect of appeal no. 62 of 2018 that the finding that the appellants received 5 lakh shares from Jayesh Dinesh Shah is incorrect, instead the appellant received the shares from Jayesh Sumesh Shah who was neither a director nor a promoter of PCL and as such connection of the appellant established to PCL has no basis.

20. In conclusion, counsel for the appellants in these two appeals (62 and 79 of 2018) submitted that there is no connection established between PCL and the appellants, disgorgement has been ordered illegally and without doing correct calculations either with respect to price or quantity or period of sales and as such the impugned order qua the appellants is unsustainable.

21. Shri Pradeep Sancheti, Learned Senior Counsel appearing on behalf of SEBI walked us through the detailed facts relating to the impugned order dated August 12, 2016. PCL has changed its name multiple times since its incorporation as Kanugo Lease and Investment Ltd. in July 17, 1992. The name was finally changed to Platinum Corporation Ltd. on June 8, 2007. Based on a complaint received by SEBI on May 12, 2008 an investigation was conducted into buying, selling or dealing in the scrip of PCL. Thereafter, show cause notice was issued on September 23, 2013 to PCL and 39 other entities including the appellants herein. It is on record that PCL made a number of corporate announcements during 2005-07 and withdrew those announcements subsequently. As a result of these misleading corporate announcements the price of the scrip of PCL increased from Rs. 1.19 to a high of Rs. 3.15. Similarly, volume of trading increased substantially from a daily average of 1.31 lakh shares to daily average of 37.07 lakh shares. Two of the corporate announcements made by PCL have been relating to tie-up with parties who were found to be related to each other namely Cartesian Computers and Alps BPO wherein the former was a wholly owned subsidiary of the latter and both these companies were found to have no business in the matter where tie-ups have been announced by PCL. Further, during the period of these corporate announcements the promoters of PCL offloaded 4 crore shares of PCL to various entities mainly off market who together made a profit of about Rs. 12 crore. Except one director neither PCL nor any other director gave any response to SEBI to the show cause notice nor appeared before SEBI, nor are on appeal herein.

22. Learned senior counsel further submitted that the impugned order establishes the connection between noticees, including the appellants herein very clearly and a chart showing the connection is also part of the impugned order. It was Ashok Shah as director of PCL who signed a tripartite

agreement with NSDL etc. in March 30, 2000. Ashok Shah was a director of Vashi Construction, Corporate Strategic Allianz Limited, Induram Developers and Exdon Trading. Registered address of Rudra Securities was the same as that of Ashok Shah's residence. Registered address of Robinson Worldwide is the same address of Induram Developers which is managed by Ashok Shah, as a Director. The mobile number being used by Ashok Shah is given in the KYC details for depository account with Stock Holding Corporation by several appellants herein. Girish Doshi, is director of Dhanlaxmi Finance, alongwith Bharat Shah and Bipin Shah who were directly connected with Ashok Shah. Learned senior counsel further submitted that this connection plays out in multiple ways i.e. by means of transfer of shares off-market, transfer of money between some of them, cross directorship in companies some of which are on appeal, common telephone no. and office address, and through preferential allotment. Therefore, the arguments of the appellants that they had no connections with PCL and its promoters/directors have no merit. He further emphasized the fact that none of the directors of PCL nor PCL itself (together constituting 7 entities) against whom directions are issued in the impugned order has come on appeal nor they cooperated with SEBI in these proceedings. Similarly, none of the appellants has shared the details relating to how they obtained huge quantities of shares of PCL off-market and the price at which they have obtained those shares etc. These factors, apart from meriting adverse inference, underline the involvement of all these entities in the fraudulent scheme.

23. Learned Senior Counsel for SEBI further submitted that several entities connected / related to Ashok Shah received shares of PCL off-market from its promoters / directors during the same period. Accordingly, Corporate Strategic Alliance received 10 lakh shares from Tushar Shah, one

of the promoters of PCL on August 4, 2006. On the same day Vashi Construction also received 10 lakh shares from Tushar Shah through off-market transaction. Ashok Shah and Hiralal Shah were directors of Vashi Construction. Further, Rudra Securities received a total of 25 lakh shares through off-market transfer from Jayesh Shah, another promoter of PCL during August 30, 2006 – September 4, 2006. The registered address of Rudra Securities was the residence of Ashok Shah. Similarly, Hiralal Shah (father of Ashok Shah), Meena Shah (wife of Ashok Shah), Sarlaben H. Shah (mother of Ashok Shah), Induram Developers Pvt. Ltd. (wherein Ashok Shah and Hiralal Shah were directors) and Exdon Trading managed by Ashok Shah are all part of the noticees in the present matter, all of them on separate appeals before us. The impugned order itself has given some the benefit of doubt to the appellants in appeal nos. 62 and 79 of 2018 by not including some of the sales between the corporate announcements. However, their arguments that the calculations are incorrect does not have any merit because the numbers indicated by them may be as per the date of trading, but the impugned order takes the correct position as reflected in their demat accounts.

24. On a specific question by the Bench as to whether open offer can be implemented after the company has been delisted, learned senior counsel Shri Sancheti submitted that though this issue has come up for first time it is not impossible to operationalize an announcement for an open offer even after delisting a company. In the instant matter PCL has been delisted on November 29, 2017 by BSE. Only difference between a normal open offer and in matters like the one under consideration is that the PAC buying the shares consequent to the open offer cannot sell it in the market. So in short, the direction to make an open offer can be implemented without any difficulties even though the company has been delisted.

25. We have perused the documents placed before us and heard the detailed submissions made by learned counsel appearing on behalf of the various appellants; Shri J. J. Bhat in Appeal nos. 303 of 2016 and 374, 375 and 376 of 2017, Shri J. P. Sen, in appeal no. 306 of 2016 and Shri Prakash Shah in Appeal nos. 62 and 79 of 2018. We also heard Shri Pradeep Sancheti, learned senior counsel appearing on behalf of SEBI in all these appeals. We also note the following position in law for ready reference:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

“12A. No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (d) engage in insider trading;*
- (e) deal in securities while in possession of material or nonpublic information or communicate such material or nonpublic information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a 11 recognised stock exchange in contravention of the regulations made under this Act.”*

PFUTP REGULATIONS, 2003

“2(1)(b). “dealing in securities” includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise

transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act.”

Prohibition of certain dealings in securities

“3. No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.”*

“4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
 - (a) to (d);*
 - (e) any act or omission amounting to manipulation of the price of a security;*
 - (f) to (j);*
 - (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*
 - (l) to (q);*
 - (r) planting false or misleading news which may induce sale or purchase of securities.”*

SAST Regulations, 1997

“8(3). Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under subregulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.”

“10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise 2 [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.”

26. Given the detailed position explained in the impugned order, the documents we perused and based on the submissions made by both the parties, we do not find any merit in the arguments of the appellants except in appeal no. 306 of 2016. Fact that there is delay in completing the proceedings cannot be a ground to set aside the impugned orders, especially when several entities were involved in the market manipulation in the scrip of PCL. In any case, as on date of issue of SCN, i.e. September 23, 2013, 8 years time frame for preserving documents provided for in Companies Act, as argued by the appellants, was not over since the charges relate to the period 2005-07 (upto September 2007). Further, we also note that some other appellants in related appeals on PCL matter had taken the same stand of time bar even during 2011-12 when the “age” of this matter was only five years.

27. Appellants in Appeal no. 374 of 2017, 376 of 2017 and 62 of 2018 have submitted that part of their acquisition of shares is not from Jayesh D. Shah as alleged in the impugned order but from Jayesh Sumesh Shah who was neither a promoter nor director of PCL. He was only an ordinary investor. While the DP account number given in the order matches the

middle name is not matching. However, the appellants are not able to furnish any other information relating to this ordinary investor Jayesh Sumesh Shah but their emphatic argument is that he is not a promoter or director of PCL. Since Jayesh Shah is not in appeal herein, we perused the records relating to his Appeal No. 94 of 2014 against an adjudication order of SEBI dated October 1, 2012 which was set aside by this Appellate Tribunal on the ground that SCNs were not received by the appellants and it was remanded for fresh orders. SEBI subsequently issued the order dated November 30, 2015 which is also challenged before this Appellate Tribunal but by only three of the original appellants except Jayesh Shah. While perusing the documents we note that Jayesh Shah, appellant therein, has never given his middle name or his father's name in any of the documents and gave only a care of address. Moreover, the DP account number stated by the appellants herein and given against Jayesh D. Shah in the impugned order are the same. On a specific query by SEBI to Central Depository Services (India) Ltd. (CDSL) SEBI was told that CDSL could not find any account relating to Jayesh Sumesh Shah in PCL share accounts. Appellants also take shelter under the findings in the impugned order that the shareholding pattern declared by PCL during 2005-07 was not correct. Therefore, Jayesh Shah is a different Jayesh Shah who is charged in the impugned order. We find that this argument is quite devious taken by the appellants since WTM of SEBI committed a small mistake of putting the middle name while no documents relating to Jayesh Shah has a middle name. Further, it is noted that WTM of SEBI did not state that Jayesh Shah was not a promoter but has only stated that there was either over reporting or under reporting of the shareholding of the promoters namely Jayesh Shah, Tushar Shah and Parag Shah etc as reported to BSE by PCL during 2005-07. When no document relating to Jayesh Sumesh Shah, giving his middle name

as evidence is available before us, the appellants herein who claim to have no connection with PCL or its directors / promoters (past or present) or any entity held to be connected to PCL taking the stand that the Jayesh Shah from whom they got shares of PCL off market is different from Jayesh Shah in the impugned order is an audacious stand. We find this is a totally devious argument coming from a group of appellants who failed to furnish any details relating to their holding of millions of shares of PCL despite the best efforts made by SEBI as well as this Appellate Tribunal.

28. We find it quite inexplicable on the reluctance of all the appellants to share details regarding their obtaining the shares of PCL. Given this reluctance, we find no fault in the decision of the WTM of SEBI in taking a notional value of Rs. 1 per share as acquisition cost while calculating disgorgement. Given the connection between erstwhile promoters or directors of PCL, the preferential allotment, cross directorship of various entities, usages of same address and telephone nos. etc. by some of the entities, the financial transactions between some of the entities, the off-market transactions of shares of PCL between some of the promoters and directors of PCL connection between these entities have been conclusively established.

29. However, in the case of two appellants in Appeal no. 306 of 2016 i.e. Mrs. Sarlaben Hiralal Shah and Mrs. Meenaben A. Shah no such connection has been established except that they were related to Shri Hiralal Shah and Ashok Shah, the latter in turn related to PCL in the past. However, Hiralal Shah and Ashok Shah's continued connection to PCL is established through their Directorship in other entities in the group such as Vashi Construction, Induram Developers (where both were directors); Corporate Strategic Allianz Limited and Exdon Trading. We have also upheld the impugned

order against Corporate Strategic Allianz vide our order dated February 1, 2018.

30. The affidavits submitted by Shri Ganatra (supra) belatedly before this Appellate Tribunal (not before WTM of SEBI) cannot be fully relied upon in the absence of supplementary evidences. What is stated in his affidavits is that in order to compensate for the shares of Renco Gears given by appellants in September 1993, shares of PCL was given to the appellants in December 1999 vis-à-vis the promise of paying cash within a few months of the original transactions in 1993. The total value of 4,45,000 shares of PCL transferred to the appellants at the rate of Rs. 40/- would be to Rs. 1.78 crore. In the absence of any details relating to the price of the shares of Renco Gears, we have to assume that value of the Renco Gears shares also would be more or less equal to Rs. 1.78 crore. In the years 1993, Rs. 1.78 crore was a substantial amount of money which is given off-hand without any agreement or any documentary evidence. Moreover, Hiralal Shah, (appellant no. 1) transferred 58,000 shares of Renco Gears in September 1993 and got 1,45,000 shares of PCL in December 1999. On the other hand both Sarlaben Shah and Meenaben Shah (Appellant Nos. 2 and 3 respectively) transferred 57,100 shares each of Renco Gears in September 1993 but each of them got 1,50,000 shares of PCL in December 1999. When the affidavit states that the shares were valued at Rs. 40/-, appellant nos. 2 and 3 should have got less number of shares than appellant no. 1 while the reverse is stated in the affidavit. For these reasons, we are not able to give credence to the affidavit beyond the point that some shares of PCL were transferred to the appellants by Shri Ganatra in 1999 because it is not disputed in the impugned order also. However, in respect of Appellant no. 2 and 3 in Appeal no. 306 of 2016 other than these transfers there is no other transactions involved, apart from their demating and selling those shares,

these affidavits become a supporting document in their matter. But for Hiralal Shah, because of his several off-market acquisitions subsequently and his connections with other entities in the group, these documents do not provide any relief. However, the acquisition of shares by Sarlaben Shah and Meenaben Shah, admittedly, acquired in 1999 is not, in any way, disputed as illegal unlike in the case of other appellants where the off-market transactions wherein the details were not ready to be given and held to be received from connected entities.

31. We do not agree with the arguments advanced by the appellants that because the preferential allotment was vitiated, appellants cannot be directed to make public offer. It is conclusively on record that 2.9 crore shares of PCL was given as preferential allotments to the 3 appellants and 4 directors of PCL. These 4 directors of PCL are not even on appeal and rather they let PCL to be compulsorily delisted rather than making the necessary correctives. It is also on record that the appellants had pledged these shares with bank as collateral for the loans taken by PCL and related entities. Accordingly, we find that the preferential allotment was not a vitiated issue but the appellants and others made it a vitiated one. Accordingly, there is no fault in the findings in the impugned order that the appellants are beneficiaries of a fraudulent preferential allotment and they need to make the public offer as per SAST Regulations, 1997.

32. Given the above facts and finding in the impugned order that appellants in all appeals, except Appellant nos. 2 and 3 in Appeal no. 306 of 2016, have violated Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), (k) and (r) of the PFUTP Regulations, 2003 cannot be faulted. Similarly, finding in the impugned order that the beneficiaries of the preferential allotment have violated Regulation 8(3) and Regulation 10 of SAST Regulations, 1997 also

cannot be faulted. The appellants in Appeal No. 374, 375 and 376 of 2017 are therefore liable for the violations of SAST Regulations, 1997 in addition to the violation of the PFUTP Regulations, 2003, common to all appellants, except Appellant nos. 2 and 3 in Appeal no. 306 of 2016.

33. We do not agree with the arguments of the appellants that a public announcement for open offer is now impossible in view of the fact that PCL has been compulsorily delisted by the BSE on November 29, 2017. We note that while issuing the order on compulsory delisting by BSE on November 29, 2017, inter-alia-, the following directions were given: *“Promoters of these delisted companies will be required to purchase the shares from the public shareholders as per the fair value determined by the independent valuer appointed by the Exchange, as mentioned in the Public Notice to be issued shortly.”* Accordingly, there is no difficulty in buying back the shares by the promoters and PACs, including the appellants in three appeals here who have been directed to do so under SAST Regulations, 1997.

34. In conclusion we pass the following order:-

- (i) Appeal Nos. 303 of 2016, 374 of 2017, 375 of 2017, 376 of 2017, 62 of 2018 and 79 of 2018 are dismissed.
- (ii) In Appeal No. 306 of 2016 we give benefit of doubt to Appellant Nos. 2 and 3, namely, Sarlaben Hiralal Shah and Meenaben A. Shah and uphold the findings relating to Shri Hiralal Popatlal Shah, Appellant No. 1. The liability of Shri Hiralal Popatlal Shah shall be discharged by his legal heirs.

35. All appeals are disposed of on above terms with no order as to costs.
In view of the disposal of the appeals, Misc. Applications do not survive and
are also disposed of accordingly with no order on costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

28.06.2018

Prepared and compared by:PTM/msb