

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

IN THE MATTER OF IRREGULARITIES IN INITIAL PUBLIC OFFERINGS

Dealings by Jayesh P. Khandwala - HUF, proprietor of Zealous Trading Company in the Initial Public Offers of IDFC Limited, Sasken Communication Technologies Limited and Suzlon Energy Limited

Date of Hearing: June 26, 2013

Appearances:

For Noticee: Mr. Jayesh P. Khandwala
Mr. Vimal Khandelwal
Mr. Anish Kharidia, Practising Company Secretary,

For SEBI: Mr. Manoj Kumar, General Manager
Ms. Anitha Anoop, Deputy General Adviser
Mr. Pradeep Kumar, Assistant Legal Adviser
Mr. Sachin Ashok Sonawane, Assistant Legal Adviser

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had passed an order dated October 26, 2010, under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') in respect of Jayesh P. Khandwala - HUF (hereinafter referred to as 'Jayesh'), proprietor of Zealous Trading Company (hereinafter referred to as 'Zealous') in the matter of irregularities in the Initial Public Offers (hereinafter referred to as 'IPOs') of IDFC Limited (hereinafter referred to as 'IDFC'), Sasken Communication Technologies Limited (hereinafter referred to as 'Sasken') and Suzlon Energy Limited (hereinafter referred to as 'Suzlon'). Vide this order Jayesh and Mr. Jayesh P. Khandwala were directed not to buy, sell or deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of three months, Jayesh was also directed to disgorge the unlawful gains of ₹4,04,20,658 along with ₹1,21,26,197 being the simple interest at the rate of 6% per annum for five years (2005-2010) on the unlawful gain of ₹4,04,20,658 within 45 days from the date of the order. The order further stated that if the said amount is not paid within the specified time, Jayesh and Mr. Jayesh P. Khandwala shall be restrained for a further period of seven years from buying, selling or dealing in securities market in any manner whatsoever, accessing the securities market, directly or indirectly or associating

with any securities market intermediary or listed company in any manner or capacity, without prejudice to SEBI's right to enforce disgorgement.

2. Jayesh and Jayesh P. Khandwala challenged the order of SEBI dated October 26, 2010 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'). The Hon'ble SAT, remanded the matter back to SEBI vide order dated April 03, 2012, while making the following observations:

"... .. These illustrations go to the root of the matter and decision thereon may have impact on the final view on the issue of financing of IPO transactions and disgorgement. The whole time member has not dealt with these issues in the impugned order. In the written submissions, the appellants have pointed out certain other inconsistencies which were also pointed out in reply to the show cause notice but have not been dealt with by the whole time member...

...

In view of the foregoing discussions, we cannot but set aside the impugned order which we hereby do and remand the matter to the Board for holding fresh proceedings against the appellants after giving them an opportunity of hearing. It is made clear that we have not expressed any view on any of the issues raised in the appeal which shall remain open"

3. Thereafter, SEBI filed a review application in the order dated April 03, 2012, before Hon'ble SAT, however the same was rejected vide order dated June 26, 2012.
4. NSDL vide its letter dated April 10, 2012, informed SEBI that it has removed the Account Level Freeze (suspended for debit and credit) in respect of four demat accounts of Jayesh and Jayesh P. Khandwala in the light of the order of Hon'ble SAT dated April 03, 2012. SEBI vide e-mail dated April 13, 2012 advised NSDL, to maintain the *status quo*, till further directions. Accordingly, NSDL again executed the Account Level Freeze in respect of said four accounts.

Against this, Jayesh filed a miscellaneous application in appeal no. 29 of 2011 decided vide order dated April 03, 2012, before Hon'ble SAT, seeking a direction to SEBI for withdrawing the e-mail referred above dated April 13, 2012. Hon'ble SAT vide order dated July 10, 2012 held that:

"In the facts and circumstances of the case, we are of the view that Board erred in advising NSDL by its e-mail dated April 13, 2012 to maintain status-quo as communicated by SEBI's order dated April 27, 2006 (wrongly mentioned October 26, 2010). In view of the fact that a part of the impugned order dated October 26, 2010 had already been complied with and the matter was remanded for the purpose of reworking the amount of disgorgement the restraint order passed against the Appellant by the ad-interim order of April 27, 2006 will not automatically revive. However, if in interest of the Securities market and in the facts and circumstances of the case, the Board so desire, it may pass a fresh order in accordance with law as it deem appropriate."

In view of the aforesaid order of Hon'ble SAT, SEBI vide email dated July 18, 2012 intimated NSDL that the directions vide email dated April 13, 2012 to maintain *status-quo* stands vacated. NSDL vide its letter dated July 19, 2012, informed SEBI that it had removed the Account Level Freeze in respect of the 'frozen' depository accounts of Jayesh and Jayesh P. Khandwala.

5. SEBI preferred an appeal before the Hon'ble Supreme Court of India against the order of Hon'ble SAT. Hon'ble Supreme Court of India vide order dated May 03, 2013, dismissed the appeal of SEBI and ordered as under:

“.....even if the court is inclined to uphold the order of remand made by S.A.T., the appellant would have no objection. However, the appellant is only anxious to receive from the respondents the list of assets.

.... learned Senior Counsel appearing for the respondents, has agreed to supply to the appellant the list of assets. Let the list be supplied within a period of three weeks. We expect the Board to dispose of this matter within a period of three months.

With these observations, the impugned order of the S.A.T. is upheld and the appeals are disposed of.” (Emphasis supplied)

6. In the meantime, the consent application of Jayesh, filed on October 27, 2010 was placed before the High Powered Advisory Committee (hereinafter referred to as 'HPAC') for consideration. Upon consideration of the consent application, the application was rejected and the same was communicated to it vide letter dated February 13, 2013.
7. Jayesh and Jayesh P. Khandwala forwarded a copy of the balance sheet to SEBI for the financial year ending March 31, 2013, in compliance with the order of Hon'ble Supreme Court. Thereafter, in compliance with the aforesaid direction of Hon'ble Supreme Court and in the interests of principles of natural justice, an opportunity of personal hearing was granted to Jayesh on June 11, 2013. However, Jayesh vide its letter dated June 10, 2013 requested SEBI to reschedule the hearing to any date after July 03, 2013. Accordingly, the same was kept for June 24, 2013. However, Jayesh vide another letter dated June 15, 2013, again sought postponement of the date of hearing. In the interest of principles of natural justice, a final opportunity for personal hearing was granted to Jayesh on June 26, 2013. On the above said date, Mr. Jayesh Khandwala, Mr. Vimal Khandwala and Mr. Anish Kharidia practising Company Secretary appeared for the personal hearing and made submissions. The written submissions were also filed during the personal hearing which were taken on record. During the personal hearing, Jayesh was asked to submit the copies of the demat account statement for the relevant period. Jayesh submitted the asked details vide its letter dated June 27, 2013. Pursuant to the personal hearing, Jayesh vide its letter dated July 01, 2013 reiterated the submissions made during the hearing and requested for

one more opportunity of personal hearing. However, in view of the time frame fixed by the Hon'ble Supreme Court of India, as mentioned above, I was unable to accommodate the request of Jayesh for further opportunity of personal hearing. However, Jayesh was given the liberty to file the written submission by July 08, 2013. Having complied with the principles of natural justice, I now proceed with the matter, taking into consideration the material available on record.

8. I note that the earlier order of SEBI dated October 26, 2010, had dealt with the matter extensively and the issues to be focused in the current proceedings are the discrepancies and inconsistencies pointed out by Jayesh in its replies and written submission as also noticed by Hon'ble SAT in its order dated April 03, 2012. At this stage, I would like to make it clear that the objective of the present proceedings is not to show how the amounts tallied to the last point.

Before proceeding further, it will be appropriate to recapitulate the facts of the case.

SEBI had conducted an investigation into the alleged irregularities in the transactions in the shares that were issued in the IPOs during the period of 2003-2005. The investigation, *inter alia* revealed that certain entities have cornered/ acquired the shares issued in the IPOs by making fictitious applications in the category reserved for the retail investors through thousands of benami/ fictitious applicants. Subsequent to the allotment of shares, these benami/ fictitious allottees had transferred the allotted shares to their principals (hereinafter referred to as 'key operators'). These key operators in turn were found to have transferred shares to certain other entities (hereinafter referred to as 'financiers'). Later on, these IPO shares, were sold by the key operators/ financiers immediately on listing and a few shares were transferred to other entities as per prior understanding, who ultimately sold the shares in the market and made unlawful profits.

Based on the findings of preliminary investigation, SEBI issued an *ex parte interim* order dated April 27, 2006 (hereinafter referred to as '*interim* order'), wherein directions were issued against various persons/ entities including Jayesh, proprietor of Zealous, not to buy, sell or deal in the securities market, including in the IPOs, directly or indirectly, till further directions. The said order also served as show cause notice (hereinafter referred to as 'SCN') to the persons/ entities named therein, offered opportunities of inspection and personal hearing. However, Jayesh neither replied to the SCN nor availed inspection of documents. It declined to appear for the personal hearing despite several opportunities, the last of which was offered on November 19, 2008.

9. While the proceedings initiated vide the interim order were pending, the investigation in the matter was completed and SEBI issued a SCN dated April 08, 2009, under Sections 11, 11(4) and 11B of the SEBI Act alleging therein that Jayesh had acted as financier to Ms. Roopalben Panchal (hereinafter referred to as 'Roopal'), M/s. Sugandh Estates and Investment Pvt. Limited (hereinafter referred to as 'SEIPL') and Mr. Biren Kantilal Shah (hereinafter referred to as 'Biren') to make applications in the retail category of the IPOs of IDFC, Sasken and Suzlon. The SCN has alleged that these persons directly transferred 9,49,620 shares of IDFC, 14,275 shares of Sasken and 28,800 shares of Suzlon, in off-market to Jayesh. Another, 11,00,000 shares of IDFC were transferred to Mr. Bhanu Prasad Trivedi (hereinafter referred to as 'Bhanu') who was acting as front entity of Jayesh and the corresponding refunds were also seen as received from the issuers. Jayesh was found to have disposed off the said shares and made an unlawful gain of ₹4,04,20,658. The SCN evidences such transactions by movement of the funds in the bank account of Zealous and the movement of shares in the demat account of Jayesh. The SCN, therefore alleged that Jayesh, in collusion with the key operators employed fraudulent, deceptive and manipulative practices to corner the shares meant for retail individual investors (hereinafter referred to as 'RIIs') in the said three IPOs. These acts of Jayesh were alleged to be in violation of Section 12A (a), (b) and (c) of the SEBI Act and Regulations 3 and 4 (1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'). The SCN called upon Jayesh to show cause as to why suitable directions under Section 11(4) read with Sections 11 and 11B of the SEBI Act, including directions restraining it from buying, selling or dealing in securities in any manner for a suitable period of time, directions to disgorge ₹4,04,20,658 and any other direction(s) as deemed appropriate, not be issued.
10. Jayesh did not file any reply to the SCN dated April 08, 2009 and sent a letter dated June 04, 2009 with certain objections. It had not filed reply to the *interim* order. However, before proceeding further in the matter, SEBI granted an opportunity of personal hearing to Jayesh on June 17, 2009. On the date fixed the authorized representative of Jayesh appeared and made submission. Thereafter, vide two letters both dated July 24, 2009, Jayesh submitted its replies to the *interim* order and the SCN dated April 08, 2009. In the meantime, Jayesh filed an application for the settlement of proceedings through a consent order. The application filed by Jayesh was dealt in accordance with the SEBI Circular dated April 20, 2007 and after the rejection of the said application, the proceedings were revived. Thereafter, another opportunity of personal hearing was granted to Jayesh on

October 08, 2010. On the date fixed for the hearing, the authorized representative of Jayesh appeared and made submission. Written submissions (although not signed) was also filed during the personal hearing which were taken on record.

- 11.** The submissions of Jayesh vide replies and written submissions dated July 24, 2009, September 10, 2010, September 15, 2010, June 26, 2013, June 27, 2013 and July 01, 2013, in brief, are as under:
 - a.** Jayesh is engaged in the business of finance to stock, market trades and trading in the shares. The transactions entered with respective entities were completely separate and independent. The financing activity was being undertaken on the basis of mutual trust and faith without entering into any formal agreements. It never advanced the amount for making subscription in the IPO or to corner the quota of RII. In the course of its financing activities, Zealous had indulged in financial and securities transactions with Roopal, SEIPL, Biren, Bhanu Prasad Trivedi (hereinafter referred to as 'Bhanu'), Ketan Shah & Co. (hereinafter referred to as 'Ketan'), Mr. Jitendra Lalwani (hereinafter referred to as 'Jitendra') and Ms. Sheelu Lalwani (hereinafter referred to as 'Sheelu').
 - b.** During the year 2005-2006, the firm had earned a total income of ₹4,58,94,953 from the share market operations. The alleged transactions carried out through Zealous have been accounted in the books and return of Income Tax has also been filed on the same. In the course of its trading in the shares, the firm had indulged into purchasing shares in off market deals from Roopal/ SEIPL/ Biren and simultaneously sold the same either to Bhanu or Jitendra or Sheelu and delivered the shares to respective demat accounts before the date of listing and made a profit of ₹8,14,167 only.
 - c.** SEBI has not rectified the admitted error in the amount of finance to Roopal in the IPO of IDFC i.e. either ₹12,75,95,000 or ₹7,87,50,000.
 - d.** SEBI has chosen and picked the amount from amongst the various amounts available in the bank statement around the period of IPO subscription and listing of IDFC, IPO. A substantial amount was received back from Roopal during the period of July 27, 2005 to July 29, 2005 i.e., immediately after alleged financing for IPO subscription of IDFC on July 25, 2005 and before the due date of allotment has not been considered by SEBI.
 - e.** The utilization of funds was at the discretion of the borrower of the funds. It has not provided any money to Biren at the time of IDFC IPO subscription.
 - f.** In total, financing of 7,720 applications in the IPO of IDFC have been alleged as against Jayesh (i.e. for cornering the shares from RII quota under the prior understanding. The 1,500 applications made by SEIPL, 5,360 applications made by Roopal and 866

applications made by Biren). However, only 3,570 applications for 9,49,620 shares of IDFC have been considered as against Jayesh for selling the same to Jitendra.

- g.** Jayesh in the IPO of IDFC had purchased 2,05,086 shares @ ₹37 from Biren, 3,98,734 shares @ ₹34.21 from SEIPL and 3,45,800 shares @ ₹34.20 from Roopal aggregating 9,49,620 shares of IDFC. These shares were purchased after the date of allotment and before the date of listing in separate and independent off-market transaction at negotiated rates from respective person. The shares so purchased were simultaneously sold to Jitendra again in an off-market transaction between the date of allotment and date of listing.
 - h.** There is huge disparity in the figures alleged in the SCN like 6,500 shares of Sasken received from Roopal against the alleged finance of ₹9.1 Crore while 6,375 shares of Sasken received from SEIPL against the alleged finance of ₹3.50 Crore.
 - i.** In the case of Biren, the SCN has not alleged any payment of money to corner the shares. The order passed against him by SEBI has concluded that he has not acted as key operator in Sasken. Therefore, the receipt of 1,400 shares from Biren cannot be alleged to have been cornered shares and for the disgorgement could not have been claimed. The purchase of shares of Sasken from Biren clearly establishes the practice of purchasing shares in off market between the date of allotment and date of listing.
 - j.** The allegation of financing Roopal by Jayesh is not corroborated with the bank statement showing the utilization of funds towards the IPO of Suzlon.
 - k.** Jayesh had received the amount alleged to be the sale consideration towards his legitimate dues to be recovered from Bhanu and not otherwise.
 - l.** The amount earned by Jayesh cannot be treated as ill-gotten gain under the guise of prior understanding to corner the shares from RII quota and thereafter sharing or routing the shares.
 - m.** The SCN is annexed with certain material and documents provided by third parties. Jayesh has not been given an opportunity to evaluate the veracity/ correctness of such information.
 - n.** Jayesh has already undergone and observed prohibitory direction since January 12, 2006 till the passing of an Order by Hon'ble SAT. The period undergone by him has been maximum punishment awarded to any accused in the IPO irregularities including the kingpin like Roopal, SEIPL and Biren.
- 12.** It is also a submission of Jayesh that certain material/ documents provided by third parties have been relied upon and that it has not been given an opportunity to evaluate the correctness of such information. This submission of Jayesh is vague and finds no merit as the charges levelled in the SCN are based on the movement of funds revealed by bank

account of Zealous and the securities lying in the demat account of Jayesh itself. Further, I note that Jayesh in its defence has only submitted the ledger statements and not any bank statement. A bank statement is the direct and authentic evidence for money transactions/transfers. Jayesh has not submitted any proof for sale/ purchase of shares such as delivery instruction slip, contract notes, etc., to show that they were purchased/ sold for mutually agreed consideration.

13. Having considered the above, I note that Jayesh has pointed out various discrepancies and inconsistencies, vide its reply and written submissions filed on various dates as also noted by Hon'ble SAT in its order dated April 03, 2012. Jayesh has argued that SEBI has chosen and picked the amount from amongst the various amounts available in the bank statement around the period of IPO subscription and listing thereof, in order to reconcile, match and fix the same with corresponding number of application made, qua the number of shares received. In my opinion, a clear nexus between Jayesh and the key operators to whom Jayesh had extended the finance, is illustrated by the financing transactions, wherein the numbers of shares that subsequently moved mostly corresponded with the number of shares allotted in the IPO to the key operators. This proposition is demonstrated through the following paragraphs wherein I have discussed the dealings of Jayesh with different key operators.
14. Let me take up the dealings of Jayesh with Bhanu first. The SCN has alleged that Jayesh had provided funds to the tune of ₹12,75,95,000 to Roopal, which were used by Roopal for making applications in the IPO. I note that Roopal had used the funds so received from Jayesh as margin money in order to make applications in the IPO of IDFC and was allotted 14,45,800 shares of IDFC. On allotment of shares, Jayesh was found to have received 3,45,800 IDFC shares directly from Roopal and another set of 11,00,000 shares, through Bhanu, who was acting as a front entity of Jayesh.

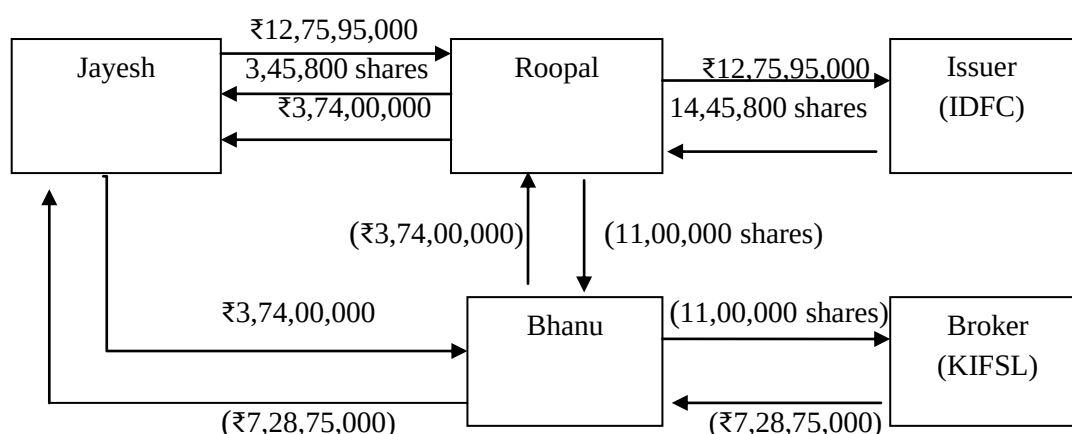
One of the allegations of SEBI in its SCN is that major portion of the illegal gains made by Jayesh pertained to 11,00,000 shares transferred by Roopal and routed through Bhanu, for which a finance of ₹3.74 Crore was provided by Jayesh. I note that Bhanu had later sold these 11,00,000 shares through Khandwala Integrated Financial Services Pvt. Limited, broker, NSE on August 16, 2005 at the rate of ₹66.25. Bhanu, on receipt of the sale proceeds of 11,00,000 shares i.e., ₹7,28,75,000, was also found to have transferred the same to Jayesh. The SCN has alleged that Jayesh was the ultimate beneficiary in respect of the sale of 11,00,000 shares by Bhanu.

In this regard, Jayesh has disputed that 11,00,000 shares that were transferred by Roopal to the account of Bhanu as on August 13, 2005 was an independent transaction and cannot be considered as part of its financing transactions with Roopal. It was also stated that Jayesh borrowed an amount of ₹3,74,00,000 on August 13, 2005 from Roopal, in the ordinary course of business and on further receipt of ₹7.28 Crore from Bhanu, Jayesh repaid the said loan of ₹3,74,00,000 to Roopal on August 16, 2005. Jayesh further argued that as per SCN, Bhanu was identified as the financier of Roopal for the 11,00,000 shares. The transaction of 11,00,000 shares in the scrip of IDFC were recorded by Bhanu in his books of accounts and a profit of ₹3.54 Crore was shown to have been realized. The same was also disclosed in his Income Tax returns. According to Jayesh, Bhanu had transferred the purchase consideration for this, directly from his bank account to the bank account of Roopal on August 13, 2005 i.e., after the date of listing on August 12, 2005. Jayesh has submitted that the question of beneficial ownership of 11,00,000 shares, does not arise in view of the fact that they were transferred from the demat account of Roopal to the demat account of Bhanu directly.

However, the bank statement of Jayesh reveals that on August 13, 2005 an amount of ₹3,74,00,000 was transferred from Jayesh to Bhanu, who in turn transferred the said amount to Roopal showing the same to be the sale consideration for the above said 11,00,000 shares. Roopal transferred the said amount of ₹3,74,00,000 to Jayesh on the very same day. This completed the circular movement of the funds as the money which went from Jayesh to Bhanu came back to its account through Roopal on the same day.

The discussed transactions have also been presented in the following chart for the ease of reference:

Table A



From the table A above, it is seen that Bhanu had sold the said 11,00,000 shares of IDFC through Khandwala Integrated Financial Services Pvt. Limited, broker, NSE on August 16, 2005 at the price of ₹66.25 per share. I note that Jayesh Khandwala is the brother of the director of Khandwala Integrated Financial Services Pvt. Limited. The sale proceeds for the same worked out to be ₹7,28,75,000, which has been paid by the broker to the bank account of Bhanu held with HDFC bank bearing account number 0061000225427 on August 17, 2008 i.e., the very next day of the trade. Additionally, an examination of the bank account of Bhanu revealed that the entire sales proceeds of such shares have been transferred to the bank account of Jayesh in its bank account bearing number 0060340004238 on the same date, which goes on to prove that Jayesh is the ultimate beneficiary of the sale proceeds of 11,00,000 shares of IDFC for which finance was provided by him only. From the above, it can be seen that with the circuitous route Jayesh had made a total gain of ₹3,54,75,000 on this particular transaction [i.e. 11,00,000 shares x (₹66.25 – ₹34)] and the same is liable to be recovered from Jayesh being the ultimate beneficiary of the transaction.

In this regard, Jayesh has argued that it had received its legitimate dues from Bhanu and not the sales consideration of 11,00,000 shares of IDFC. It has been said that as Bhanu owed ₹7.43 Crore to it, he transferred ₹7.28 Crore to Jayesh to reduce his debit balance in the books of Jayesh. It has been said that even after this payment, there was still a debit balance of ₹14 Lacs recoverable from Bhanu and the ledger of Bhanu shows that his account was squared off to 'NIL' balance in the month of November, 2005. Jayesh has also said that on receipt of ₹7.28 Crore from Bhanu, Jayesh repaid the loan of ₹3.74 Crore to Roopal on August 16, 2005. However, the fact remains that ₹3.74 Crore was paid to Roopal on August 16, 2005, whereas, the payment from Bhanu admittedly came on the next day, i.e., August 17, 2005 as discussed above. Therefore, the question remains as to how it could repay Roopal's loan, from the amount which Jayesh claims as paid by Bhanu on a subsequent date.

Also, Jayesh has made an argument that Bhanu has shown the profits made by him from the sale of such 11,00,000 shares of IDFC in his income tax returns and has paid the capital gains tax on the same. I note that the capital gains tax paid by Bhanu is in respect of the shares that were liquidated and the money that he has received. However, the fact remains that Jayesh from the allegation that it was the ultimate beneficiary of such shares. Paying of capital gains tax by Bhanu appears to be an internal arrangement between the two of

them. Having seen the flow of funds from Jayesh for the purchase consideration of 11,00,000 shares of IDFC, manner of receipt of payout to Bhanu and the ultimate transfer of funds to Jayesh, it is clear that they all were working in furtherance of a common scheme and Jayesh became the ultimate beneficiary of such shares.

In this context, Jayesh has placed its reliance on the order of Hon'ble SAT in the matter of *Jayantilal Jitmal*. I have seen the order of Hon'ble SAT in this case and note that the facts of the present case are different. In the matter of *Jayantilal Jitmal*, the appellant had contended that the shares sold by him did not belong to him as they were purchased out of common family funds. It was held that as *Jayantilal Jitmal* had paid tax on the profits made from the sale of shares, the said shares belong to *Jayantilal Jitmal*. I place reliance on the order of Hon'ble SAT in the matter of *Dipak Panchal Vs SEBI* in appeal no. 198 of 2011, the relevant extract has been brought out below:

“The declaration given by Roopalben Panchal confirming dealings of the shares other than IPO and transactions in 1999 does not, in any way, mitigate the case against the appellants with regard to transactions in respect of shares under the IPO scam. On the basis of material placed on record, the transfer of shares from Roopalben Panchal to appellants is not in dispute. These were the shares which were purchased using fictitious demat accounts is also not in dispute. If the earnings under these shares are shown in the income tax returns that by itself, cannot be a mitigating factor if transactions are otherwise found to be violative of regulatory framework.”

In the light of the above discussion, I am not inclined to accept the submissions of Jayesh that payment of tax by Bhanu should absolve him from the charge of accruing illegal gains from the transfer of 11,00,000 shares.

15. It is also seen that in the dealings pertaining to the IPO of Sasken, the amount of money advanced as by Jayesh corresponds exactly to the number of shares and the refund received by Jayesh. In the IPO of Sasken, Jayesh had dealt with Roopal, Biren and SEIPL. In the case of Sasken, Jayesh is alleged to have received 1,400 shares from Biren on September 06, 2005, 6,500 shares from Roopal on September 05, 2005 and 6,375 shares from SEIPL.
- a. With respect to the allegation of **financing by Jayesh to Roopal in the IPO of Sasken**, Jayesh has denied the allegation and has said that the finance was not provided for the purpose of making subscription of IPO. The SCN has alleged that Jayesh had provided ₹9,10,00,000 to Roopal on August 22, 2005. This amount corresponds to the application money for 1,000 applications in the IPO of Sasken. On allotment, Jayesh is found to have received 6,500 shares from Roopal on September 05, 2005. Jayesh also received back the

amount of ₹8,93,10,000 on September 05, 2005, corresponding to the refund money after adjustment of allotment money in respect of 6,500 shares.

I note that Jayesh in its reply has not denied the fact of providing ₹9,10,00,000 to Roopal. However, it has denied the allegation of financing Roopal for the purpose of making subscription of IPO and it is also a submission of Jayesh that SEBI has picked and chosen the entries.

Jayesh has submitted that it was into financial transactions with Roopal on a regular basis. However, the transfer of shares from Roopal to Jayesh, in IDFC, Sasken and Suzlon coupled with the fact that these flow of shares were preceded by transfer of corresponding money simply from Jayesh to Roopal are strong evidences to indicate that these are not plain vanilla financing transactions but deliberate efforts of Jayesh to corner the shares and make illegal gains. Therefore, the other amounts said to have been advanced by Jayesh to Roopal are of no concern to the instant proceedings. Jayesh in its reply has not explained whether these financing was for any specific purpose or IPO etc. Further, I also note that Jayesh in its submission has failed to produce any documentary proof like contract notes or delivery instruction slips in support of its contention that the shares were purchased from Roopal. It was incumbent upon Jayesh to disclose all the details relating to the said amount, which it has clearly failed to do. The submissions of Jayesh thus appear to be mere afterthoughts.

Thus, Jayesh is found to have provided ₹9,10,00,000 to Roopal on August 22, 2005, which corresponds to the application money for 1,000 applications at the rate of ₹91,000 each. It is further seen from the demat account statement of Jayesh that it had received 6,500 shares from Roopal on September 05, 2005, i.e., four days before the date of listing. The corresponding allotment money in respect of the said 6,500 shares was ₹16,90,000 and the total refund money after adjustment of allotment money in respect of the said shares is ₹8,93,10,000 [i.e. ₹9,10,00,000 (amount advanced) – ₹16,90,000 (allotment money for 6,500 shares)]. Jayesh is found to have received ₹8,93,10,000 on September 05, 2005.

In short, the finance provided by Jayesh thus corresponded with the application money and the refunds exactly matched with the money and shares that were due from Roopal to Jayesh. These transactions viewed against the background of close nexus between Jayesh and Roopal, reiterates that Jayesh had acted in concert with Roopal to execute the game

plan to corner the shares meant for RII in the IPO of Sasken and made illegal profit out of it.

b. Financing by Jayesh to SEIPL in the IPO of Sasken. The SCN has alleged that Jayesh had provided the finance of ₹3,50,00,000 to SEIPL on August 17, 2005, which corresponds to the application money for 385 applications in the IPO of Sasken. On allotment, Jayesh received 6,175 shares from SEIPL on September 03, 2005 and another 200 shares on October 05, 2005. Thereafter, Jayesh received amounts of ₹3,50,00,000, ₹3,50,00,000 and ₹1,93,42,500 from SEIPL through fund transfer on September 09, 2005. On the same day, amounts such as ₹3,50,00,000, ₹3,50,00,000 and ₹1,94,00,000 were returned to SEIPL. Such circular transactions have been alleged to be deceptive in nature and shows the prior understanding between SEIPL and Jayesh including sharing of profits with SEIPL or Mr. Parag Jhaveri, director of SEIPL.

Jayesh in its reply has not denied of providing ₹3,50,00,000 to SEIPL on August 17, 2005. However, it has been argued that SEIPL had received not only ₹3,50,00,000 but ₹9,10,00,000 from it. It has also been said that SEBI has ignored the ledger account/ the entries appearing therein and partially selected the dates without any cogent reason. Jayesh has named such funds as regular financing activity with SEIPL. With respect to the receipt of shares, Jayesh has submitted that the shares were received at mutually negotiated rate towards the repayment of debit balance prevailing in the account on the relevant date.

Jayesh has submitted that it has transferred ₹5,60,00,000 on August 22, 2005 to SEIPL, which is a separate transaction and has not been considered by SEBI . However, I note from the bank account statement of Jayesh that the transaction for ₹5,60,00,000 on August 22, 2005 as argued by Jayesh, does not bear any account number and from the same it is not clear as to whose account the money was going. Further, for the sake of argument, even if one accepts the submission of Jayesh, then also I note that like other instances as discussed earlier, Jayesh has not submitted the details of arrangement which it had with SEIPL. Further, no specific details of the share transactions or of the prevailing debit balance have been provided by Jayesh. It is an admitted fact that Jayesh had received 6,375 shares from SEIPL. However, the bills submitted by Jayesh before the Hon'ble SAT, during the appeal proceedings for the said transaction of SEIPL shows that 6,375 shares were sold by SEIPL on September 07, 2005 at the rate of ₹274. It is difficult to understand as to how 6,375 shares received from SEIPL by Jayesh on September 03, 2005 and

October 05, 2005 were sold by SEIPL on September 07, 2005 (*and not by Jayesh and further the shares received on a subsequent date have also been shown in the bill*). It is noted from the demat account statement of Jayesh that the said 6,375 shares were lying in the demat account of Jayesh. Thus, the said bill raises serious questions over the conduct of Jayesh and the authenticity of the documents submitted by Jayesh during the course of proceedings before Hon'ble SAT. Further, Jayesh has failed to produce any documentary proof like delivery instruction slips and contract notes in support of its contention that the shares were purchased by it. Thus, in view of the same, I am unable to accept the submissions of Jayesh.

- c. **Dealings of Jayesh with Biren and Ketan.** In the case of Sasken, it is seen that although Jayesh had transferred funds to Ketan, corresponding shares have moved from Biren to Jayesh. As per the SCN, Jayesh had received 1,400 shares of Sasken from Biren on September 06, 2005. I note the instances of fund flow in this regard have happened from Jayesh to Ketan, as mentioned above. The SCN has not alleged financing by Jayesh to Biren. It has been demonstrated that Jayesh had extended the finance to Ketan before the receipt of the shares by Jayesh from Biren. These facts points to certain nexus between Jayesh, Ketan and Biren.

I note that the proof of manipulation always depends on the inferences drawn from a mass of factual details. Findings must be gathered from patterns, nature of the transactions, etc. The evidence, direct or circumstantial should be sufficient to raise a presumption in its favour with regard to existence of a fact sought to be proved. It is exceedingly difficult to prove the facts especially within the knowledge of the party proceeded against and under such circumstances findings would be inferential based on the conduct of the parties. The legal proof in such circumstances partakes the character of prudent man's estimate as to the probabilities of the case. The Hon'ble SAT in the matter of *Ketan Parekh Vs SEBI* has held that

"Whether transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from attending circumstances because direct evidence in such cases may not be available."

Jayesh has admitted that it has purchased 1,400 shares from Biren and that the same has been sold by it to Bhanu in off market. However, Jayesh has not submitted any authentic independent documentary evidence such as contract note, delivery instruction slip etc. or

any document to show the rate at which the shares were purchased or bank statement to show that the amount paid to Biren for the said transaction, etc. In view of these, it is difficult to say that the subject purchase transaction of 1,400 shares was a normal share purchase transaction.

d. Dealings of Jayesh with Bhanu. The above discussed shares of Sasken received by Jayesh in its demat account from Roopal, SEIPL and Biren i.e., totalling to 14,275 shares were transferred to Bhanu during September, 2005 (i.e. 13,550 shares on September 09, 2005 and 725 shares on September 14, 2005). The shares so received were sold by Bhanu on September 09, 2005 at the rate of ₹493.54 through Khandwala Integrated Financial Services Pvt. Limited, wherein brother of Jayesh P. Khandwala is Director.

Jayesh in its reply has admitted the selling of 14,275 shares to Bhanu, which were purchased in off market transaction from Roopal, SEIPL and Biren. However, Jayesh has not provided the details of the said transaction, such as the date, rate, the bank statement reflecting the amount received, etc. I note that such details which are easily available in the contract notes, delivery instruction slips, bank statements, etc. would have substantiated Jayesh's defence. Instead, Jayesh has refrained from providing the same, which leads one to conclude that its submissions are incorrect.

Having a close look at the dates of shares purchased by Bhanu, even if, one accepts that short selling is a permissible practice, the fact remains that the broker had transferred the gross amount of ₹70,45,343.75 on September 14, 2005 to the account of Bhanu without deducting any brokerage, turnover tax and other transaction charges. The sale consideration i.e. ₹70,45,343.75 was transferred by Bhanu to Jayesh on the receipt thereof. The nature of transaction and flow of funds suggests that Bhanu and Jayesh had close nexus and that Jayesh was the ultimate beneficiary of the entire transactions. Therefore, the masked routing of shares and fund transfer are deceptive and only intended to mislead others.

As regards the amount of ₹70,45,343.75 received from Bhanu, Jayesh has submitted that mere transfer of funds does not amount to showing of benefit especially in view of the fact that they had ongoing financial relationships of borrowing and lending. It has also been said that Bhanu disclosed the profit of ₹3.33 lacs realized on the sale of shares of Sasken in his Income Tax Return and had paid tax on it. In this regard, I again reiterate my

observation as made above that the capital gains tax paid by Bhanu may be in respect of his transactions in the scrip of Sasken. However, the same does not absolve Jayesh from the allegation that it was the ultimate beneficiary for sale of such shares. Paying of capital gains tax by Bhanu could be an eye wash as the same could have been a mutual arrangement between the two of them.

I have seen the above discussed transaction and note that the amount of ₹70,45,343.75 has been transferred by Bhanu from his bank account no. 0061000225427 to the bank account of Jayesh bearing account no. 0060340004238, vide cheque number 148695. It is thus clear that what Bhanu has transferred to Jayesh is the amount equivalent to the value of shares sold by Bhanu. The profit for such sale of shares work out to be ₹233.54 (₹493.54-₹260) per share.

Thus, the total profit on such deal (i.e., sale of the shares received by Jayesh, from SEIPL, Roopal and Biren, which was equivalent to the finance extended by Jayesh to these {*in the case of Biren, money has gone to Ketan*}) aggregated to ₹33,33,783.35, which finally came to the hands of Jayesh, who was the ultimately beneficiary of the transaction. In this process, Jayesh deprived the RIIs from their rightful allotment. I note that Jayesh has not provided any documentary evidence for its stated ongoing financial relationship with Bhanu and others except the ledger. These facts are especially within the knowledge of Jayesh alone and it was therefore incumbent upon Jayesh to disclose all the details relating thereto, which Jayesh has failed to do. Thus, the submissions of Jayesh do not find any merit for consideration.

16. Coming back to the dealings of Jayesh in the IPO of IDFC, the transfer of money and shares alleged in the SCN is depicted in the table below:

Table B

Name of the IPO	Name of the Key Operator	Funds provided to Roopal (₹)	Details of Cheques / Ledger entries	No. of shares recd. from Roopal	Value of Shares (no. of shares x issue price i.e. ₹34)	Refunds recd. from Roopal (₹)	Details of Refund Cheques /ledger entries
IDFC (15/07/05 to 22/07/05)	Roopal	4,37,50,000	Cheque no. 881413 dated 13/07/05	3,45,800	1,17,57,200	5,01,22,800	cheque no. 269 dated 10/08/05
		4,66,40,000	Cheque no. 881516 dated 23/07/05	11,00,000	3,74,00,000	2,00,00,000	cheque no. 269 dated 10/08/05
		1,53,30,000	Cheque no. 881524 dated 26/07/05			83,15,000	Balance with him
		2,18,75,000	Cheque no. 881487 dated 20/07/05				
Total		12,75,95,000		14,45,800	4,91,57,200	7,84,37,800	

Jayesh in its reply has pointed out certain discrepancies. In this regard, I note that there is an admitted error as noted in the SAT order w.r.t the computation of amount advanced by Jayesh to Roopal. An amount of ₹7,87,50,000 is shown as financed by Jayesh in SEBI's order against Roopal. However, the amount alleged to have been financed by Jayesh is ₹12,75,95,000, as per the instant SCN against Jayesh. In this regard, I note that the bank statement of Jayesh is the relevant document to prove the amount that Jayesh has provided to Roopal, for IPO financing, as demonstrated in the SCN. Jayesh in its reply has submitted that the complete bank statement has not been provided to it by SEBI. The bank account that is discussed here is of Jayesh itself. One cannot ignore the fact that the bank statement is primarily a document available with the account holder himself. The bank statement of Jayesh shows that the funds to the tune of ₹12,75,95,000 was provided to Roopal as demonstrated in the SCN.

In addition to the 11,00,000 shares routed through Bhanu as discussed in para 14 above, there was another set of 3,45,800 shares which was received by Jayesh from Roopal for the value of ₹1,17,57,200. I note that Jayesh has also not denied the receipt of these shares. However, the argument taken by Jayesh is that the shares were received from Roopal under a separate and independent off market deal towards repayment of loan by Roopal @ ₹34.21 and not at ₹34. But Jayesh has not produced any supporting documentary evidence such as delivery instruction slip, contract note, etc. In the absence of such details, it is difficult to accept the version of Jayesh.

While proceeding further, I note that Jayesh had admittedly provided ₹12,75,95,000 in all to Roopal. Jayesh in its reply has attempted to show that it received back the same amount by cheque and shares in lieu of the money. The ledger statement as worked out from the submission made by Jayesh has been brought out below for reference:

Table C

S. No.	Amount financed to Roopal (₹)	Date of Finance	Date of repayment	Repayment of finance as per submission of Jayesh (₹)	Mode
1	4,37,50,000	July 13, 2005	July 27, 2005	1,49,87,685	By bill for NS2005038
2	2,18,75,000	July 20, 2005	July 29, 2005	3,07,00,000	By cheque
3	4,66,40,000	July 23, 2005	August 10, 2005	2,00,00,000	By cheque
4	1,53,30,000	July 26, 2005	August 10, 2005	5,01,22,800	By cheque
5			August 10, 2005	1,18,29,818	By bill for NS2005041 (3,45,800 shares recd. @ ₹34.21 amounting to ₹1,18,29,818 towards the repayment of debit balance of ₹1,17,84,515 in the account of Roopal)
Total					
	12,75,95,000			12,76,40,303	

From the above table, I note that Jayesh has shown that against the loan amount of ₹12,75,95,000 provided by it, Jayesh has received back an amount of ₹12,76,40,303 as refund from Roopal i.e., an excess amount of ₹45,303. However, this submission of Jayesh is not supported by any documentary proof other than its own ledger statement. I have considered the submissions of Jayesh and note that the entry of ₹1,49,87,685 as on July 27, 2005 as noted in table C above, does not have the details (such as rate and quantity) of the transaction. Another entry of ₹3,07,00,000 as on July 29, 2005, in the bank statement of Jayesh finds no mention of Roopal. In view of these, it is difficult to conclude that Jayesh had received the said money from Roopal. Considering the same, I am unable to accept the submissions of Jayesh.

17. In addition to the above transactions, I note that the SCN also alleges certain other transactions with the key operators in the scrip of IDFC and Suzlon wherein the shares have been transferred to Jitendra and Sheelu. Jayesh in its reply has strenuously argued about the figures and the amounts received from Jitendra and Sheelu. I have considered the submission of Jayesh and note that SEBI has disgorged the unlawful gains from Jitendra as against the sale of 9,49,620 shares of IDFC in the market. I note that the present proceedings are in respect of the gains made by Jayesh against the sale of said 9,49,620 shares of IDFC to Jitendra. It has been demonstrated in the SCN that a commission/ sale proceeds of ₹11,61,875 has been received by Jayesh in this transaction.

Similarly, SEBI has disgorged the unlawful gains from Sheelu as against the sale of 28,800 shares of Suzlon in the market. As noted above, the present proceedings are in respect of the gains made by Jayesh against the sale of said 28,800 shares of Suzlon to Sheelu. Further the SCN also shows that a commission/ sale proceeds of ₹4,50,000 have been received by Jayesh in this transaction.

I have seen the transaction whereby Jayesh has received the said shares of IDFC and Suzlon and the onward sale to Jitendra and Sheelu. In this regard, Jayesh in its reply has *inter alia* argued that it had other financial transactions with SEIPL which have not been considered by SEBI and also that the financial transactions with Ketan was with an intention to earn interest and further that the funds provided to Roopal were deployed for different purpose, etc. I have considered these submissions of Jayesh. However, the fact remains that the reply of Jayesh is silent on the interest at which such amount was lent. Whether such interests were credited is also not clear from the bank statement of Jayesh.

Without going into further details, I note that Jayesh has not produced any document on record like contract note or delivery instruction slips to show that the shares were transferred to Jayesh for mutually agreed consideration. In the absence of such details relating to the purchase and sale price, it is difficult to arrive at a conclusion regarding the exact amount of profit made by Jayesh in this regard.

18. Having discussed the above transactions, now let me deal with one important issue which is vital for the conclusion of the present matter: **Whether Jayesh was a financial company engaged in regular and normal lending and borrowing transactions?**

- a.** It is an admitted fact that Jayesh had provided finance to key operators like SEIPL, Roopal, etc. I note that upon receipt of these amounts, the key operators cornered the shares meant for RIIs in the IPOs. Pursuant to the allotment of the shares in the IPO, these key operators had transferred the shares to the demat account of Jayesh along with the corresponding refunds. However, Jayesh has argued in its submissions that the transactions entered with the key operators are separate and independent.
- b.** While considering the submissions of Jayesh, I note that no proof for the loan transaction with key operators such as a formal agreement has been brought on record by Jayesh. Although Jayesh has argued that the financing activity was being undertaken **on the basis of mutual trust and faith**, it does not convince a reasonable and prudent mind that anybody could enter into the large scale operations as reflected in the bank statement seen in the instant case, without necessary documentation or secured collaterals. If the so-called 'lending and borrowing' business involved only minimal volumes, one could have believed the version of Jayesh. I note that the transactions that are discussed herein are of high value and it is difficult to believe that the loans were being advanced without seeking the object/ security/ documentation. On the contrary, the submission of Jayesh that the amount was financed to key operators without executing any document goes to prove that the loan advancement was a matter within the knowledge of Jayesh alone and hence, it is incumbent upon Jayesh to disclose all the details relating thereto. Jayesh has failed to do this.

In this regard, I refer to the judgement of the Hon'ble SAT in the matter of *Dushyant Dalal Vs. SEBI* in Appeal no. 182 of 2009 decided on November 12, 2010 wherein the Hon'ble SAT had held that:

*“..., the appellants had provided the exact amount that was required for making the requisite number of applications instead of a round figure which would have been the case had these been ordinary loan transaction. Be that as it may, it is the appellants’ own case that they have advanced loans to the key operators without executing any document(s) or taking any security. The appellants in their written submissions filed on the conclusion of the hearing have clearly stated that “THERE IS NO NEXUS BETWEEN THE APPELLANTS AND PB OR SUGANDH”. They have detailed reasons in paragraph 19 of their submissions as to why there is no nexus between them. Assuming this to be so, (though we are holding to the contrary) we wonder how such large sums of money could be given on loan without any documentation or security to persons with whom the appellants had no nexus. To say the least, this is most incredible and we are not willing to accept this argument. **Besides the mere ipse dixit of the appellants, there is no material on the record to show that they advanced loans to the two key operators. Since the appellants had provided funds to them, the onus to establish that those were given as loans only as money lending transactions was on the appellants**”*

Therefore, the onus to prove that Jayesh was providing funds as part of its lending business, to key operators on a regular basis independent of IPO transactions was a matter to be demonstrated by Jayesh itself. Having failed to do so, I conclude that Jayesh has financed the key operators with the ultimate goal of making illegal gains through sale of shares to be procured by it in the RII category.

- c. Nor does Jayesh have any explanation/ purpose for which such amounts that were advanced. The contention of Jayesh is that the same were for commercial purpose to earn interest. This appears to be an afterthought. Even if one believes this explanation, then also the doubt regarding silence on the interest at which the subject amount were lent and receipt thereof, in the reply/ submission of Jayesh. In so far as SEBI is concerned, these details are within the knowledge of Jayesh alone and therefore, it was incumbent upon it to disclose all the details relating to these transactions. Having failed to do, the argument regarding transactions based on mutual trust and faith and hence the absence of formal agreement and etc., does not merit consideration.
- d. I note that Jayesh has failed to explain as to how it started trusting Roopal, SEIPL, Bhanu, etc. It is not even clear whether the named persons/ entities were long standing business partners or closely related to Jayesh or whether they flocked together to execute a scheme. In the absence of such clarification, one has to look into the circumstantial evidence narrated by the facts of the case. The flow of shares is evidenced by the demat statement, wherein the allotment is done to Roopal in the IPO and the transfer thereafter happens to Jayesh. If one looks at the amount of money financed, it is seen to be almost equivalent to the value of application money or that of a set of applications. On allotment, the shares were seen transferred to Jayesh along with the corresponding refund money after adjusting

the shares allotted. Having seen the same, it is difficult to believe that the transactions were plain vanilla financing transactions. The story could be believed if it was only a single transaction, but the suspicion hardens when the figures match, on more than one occasions. The amounts were in exact multiples of the issue price of shares.

- e. Again, the financing transactions of Jayesh cannot be called as mere loan transactions as Jayesh has shown neither any security for such high value loans nor any terms of repayment in its reply. Jayesh has also failed to produce the details of financial relationship with the said key operators, except the ledger statements for a specific period. A ledger statement is nothing but a record created at the end of Jayesh and the same needs to corroborated with the bank statement or any other independent documents. It is not a valid evidence to show that there is long standing business/ financial relationship. Therefore, in view of the above, I cannot accept the submission of Jayesh that it had a long standing financial relationship with the key operators which was not a part of the scheme to corner retail shares in IPOs and had thus provided such high value loans.

I also note from the SCN that the instances relating to transfer of money and corresponding flow of shares which are pointed out are not one or two, which can be termed as coincidence. The SCN discusses about three IPOs.

From the above discussion, one can conclude that the lending and borrowing transactions of Jayesh were not normal and regular financing transactions. The silence of Jayesh towards the objective of such large-scale financing hints that it was acting as the mastermind of the whole scheme by providing huge finances to key operators and was executing the game plan to corner the shares meant for RII and enriched profits out of these.

- 19. While concluding, let me note that the perfect tallying of money and shares in the accounts of Jayesh is difficult in such cases as every application in IPO does not fetch an allotment and key operators may also retain a portion of the allotment towards their shares of profit in the game plan. However, in the present matter the money financed and the shares transferred have perfectly matched, which makes it clear that Jayesh had extended finance for the IPO subscription. In this regard, I place my reliance on the order of Hon'ble SAT in the matter of *Dhaval Mehta Vs SEBI* decided on September 08, 2009, the relevant extract has been brought out below:

"... Disgorgement of illegal gains are ordered against those who violate the securities laws and make unlawful gains. The amount should not exceed the total profits realized as a result of the unlawful activity and the amount ordered to be disgorged should approximately be equal to the amount of unjust enrichment. In the instant case, the whole time member has worked out the amount from the prices that were available and we find no ground to interfere with the order in this regard."

While proceeding further, I note that Jayesh had extended finance to the key operators in multiples of retail application size during the period of IPO subscription, as detailed in the above paragraphs. This was repeated during different IPOs. I note that out of the total instances discussed in the above paragraphs, in certain instances Jayesh had provided money after the closure of the issue. In this regard, I note that though in three instances, as discussed above, funds appear to have been provided by Jayesh after the closure of the issue. What is more important is that these funds should have become available to the key operators before their IPO related liabilities actually became due. Therefore, the fact about payment being made after the IPO date cannot be termed as totally incompatible with the IPO financing operations carried out by Jayesh.

Further, I note Jayesh had received shares in multiples of the retail allotment size in off market generally prior to the date of listing from key operators. Thereafter, Jayesh also received back the balance money, over and above the shares valued at IPO price. The movement of exact amount of funds and number of shares between the key operators and Jayesh, repeatedly connotes prior understanding. I also note that Jayesh in support of its submission has only relied upon its own ledger statements. It is significant to note that Jayesh has not placed any of its bank statement on record in its defence which will of course be available to it and that according to me would have been authentic evidence to believe Jayesh's version of the story. On the contrary, the bank statement available with SEBI proves otherwise.

20. I have considered the pattern of the flow of shares received by Jayesh from the key operators. Each lot of shares acquired, corresponds to the allotment of certain number of applicants in the RII category. If Jayesh had applied for shares in the retail category in each of the discussed three IPOs it would have received only 266 shares of IDFC, 25 shares of Sasken and 16 shares of Suzlon. I note that Jayesh has managed to receive the shares in excess of its eligibility in the discussed IPOs as narrated above, meant for retail investors. The DIP Guidelines envisage an investor to apply for shares for a value of up to ₹1 lakh. These do not envisage an investor making multiple applications each up to ₹1 lakh, which defeats the solemn objectives of such provisions. If a person does so, it deprives genuine RIIs from getting their fair share in IPO allotment. Jayesh did so by making available the

finance to key operators for making multiple applications for an aggregate value in excess of ₹1 lakh with the full knowledge of prohibition of the same. If it had not entered into these transactions and cornered the shares, these aforesaid shares of IDFC, Sasken and Suzlon would have been available for allotment to RIIs. Thus, Jayesh clearly cornered the shares meant for RIIs and in the process, deprived them of their rightful share in allotment in these IPOs and made unlawful gains.

21. It is clear from the above that Jayesh was the master mind in the manipulation of retail segment of the IDFC, Sasken and Suzlon IPOs. For the reasons cited in the preceding paragraphs, it is difficult for me to estimate the entire extent of unlawful gains made by Jayesh. However, at the very minimum, it had earned unlawful profits from three clearly demarcated transactions given below in table D. In the facts and circumstances of the case, I find that Jayesh received the shares from the key operators as per the prior understanding. By doing this, Jayesh has deprived RIIs from their legitimate share in the allotment of these IPOs and made an unlawful gain at least of ₹3,88,08,783 to the detriment of the RIIs.

Table D

IPO	KO	Amt. provided to KOs (₹)	Issue Details						No. of applications made	Receipt of shares and refunds by Jayesh			Disposal of shares recd.			Unlawful Gains (₹)
			Issue Price (₹)	Retail application size		Retail allotment size		Receipt of shares		Refund amt. (₹)	Transfer red to/ through	No. of shares transferred	Commission / Sale proceeds			
				No. of shares	Amt. (₹)	No. of shares	Amt. (₹)	No. of shares						Value at issue price(₹)		
1	2	3=(6x9)=(11+12)	4	5	6=(4x5)	7	8=(4x7)	9=(3/6)	10	11=(4x10)	12	13	14	15	16	
IDFC	Roopal	12,75,95,000	34	1,400	23,800*	266	9,044	5,360*	3,45,800	1,17,57,200	7,01,22,800					
	Roopal (Bhanu)								11,00,000	3,74,00,000		Bhanu	11,00,000	7,28,75,000	3,54,75,000	
Sasken	SEIPL	3,50,00,000	260	350	91,000	25	6,500	385	6,375	16,57,500		Bhanu	14,275	70,45,343	33,33,783	
	Roopal	9,10,00,000			91,000			1,000	6,500	16,90,000	8,93,10,000					
	Biren	-			-			-	1,400	3,64,000	-					

*₹12,75,95,000 provided by Jayesh to Roopal was used for meeting 50% margin requirement @23,800 for 5,360 applications.

22. I, therefore, conclude that Jayesh had employed fraudulent, deceptive and manipulative practices to corner the shares meant for RIIs in the aforesaid IPOs and made unlawful gains. Such acts of serious irregularities threaten the market integrity and orderly development of the market and call for regulatory intervention to protect the interest of investors. Such entities are not allowed to unjustly enrich themselves at the cost of investors. Hence, I hold that Jayesh has violated Section 12A (a), (b) and (c) of the SEBI Act and Regulations 3 and 4 (1) of the PFUTP Regulations.
23. The interest of the market and of the investors requires that such entities are not allowed to participate in the market and unjustly enrich themselves at the cost of investors. Such acts of serious irregularities threaten the market integrity and orderly development of the market and calls for regulatory intervention to protect the interest of investors. Accordingly, in exercise of the powers conferred upon me under Section 19, read with

Sections 11, 11 (4) and 11B of the Securities and Exchange Board of India Act, 1992, and after taking into account the period of prohibition already undergone by Jayesh, I hereby issue the following directions:

- a. Jayesh P. Khandwala - HUF (PAN: AAAHJ 4784N) and Mr. Jayesh P. Khandwala (PAN: ABHPK 0873H) shall not buy, sell or deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period three months from the date of this Order;
 - b. Jayesh P. Khandwala-HUF shall disgorge the unlawful gain of ₹3,88,08,783. It shall also pay ₹3,74,70,356, being the simple interest at the rate of 12% per annum for 8 years (2005-13) on the unlawful gain of ₹3,88,08,783. Thus, it shall pay a total amount of ₹7,62,79,139 (Rupees Seven Crore Sixty Two Lakh Seventy Nine Thousand One Hundred Thirty Nine only);
 - c. Jayesh P. Khandwala-HUF shall pay the above amount within 45 (forty five) days from the date of this order by way of crossed demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai
 - d. In case the aforesaid amount ₹7,62,79,139 is not paid within the specified time, Jayesh P. Khandwala - HUF and Mr. Jayesh P. Khandwala shall be restrained for a further period of seven years from (i) buying, selling or dealing in securities market in any manner whatsoever, (ii) accessing the securities market, directly or indirectly, or (iii) associating with any securities market intermediary or listed company in any manner or capacity, without prejudice to SEBI’s right to enforce disgorgement.
24. The period of debarment already undergone by Jayesh P. Khandwala - HUF and Mr. Jayesh P. Khandwala shall be set-off from the period of debarment as directed herein above.
25. This Order shall be served on all recognized stock exchanges and depositories to ensure that Jayesh P. Khandwala - HUF and Mr. Jayesh P. Khandwala are not allowed to undertake transactions as prohibited in Para 23 above.
26. This Order shall come into force with immediate effect.

PLACE: Mumbai
DATE: August 12, 2013

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA