

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 62 of 2007

With

Misc. Application No. 27 of 2008

And

Misc. Application No. 60 of 2008

Date of decision: 30.07.2008

Design Auto Systems Limited

Sh. Sarvesh Garg

Smt. Rita Garg

Sh. Prashant S. Rajgarhia

.....Appellants

Versus

Securities and Exchange Board of India

.....Respondent

Mr. Harish Pandya Advocate with Mr. Rajendra Kookada Advocate for Appellants.

Dr. Poornima Advani Advocate with Mr. Haihangrang E.H. Newme and Ms. Pranita Mhatre Advocates for the Respondent.

Coram: Justice N.K. Sodhi, Presiding Officer

Arun Bhargava, Member

Utpal Bhattacharya, Member

Per: Justice N.K. Sodhi, Presiding Officer (Oral)

Design Auto Systems Limited (DASL for short) is a public limited company incorporated under the provisions of the Companies Act, 1956. It made a preferential allotment of ten crore shares on October 29, 2001 to Bonanza Biotech Limited (BBL) on swap basis. During the course of the investigations undertaken by the Securities and Exchange Board of India (for short the Board) into the dealings in the shares of DASL, it transpired that the allottee traded the shares on the Bombay Stock Exchange (BSE) even before they were listed. When this fact came to light, BSE intervened and suspended the trading in the scrip with effect from 11.1.2002. It is common ground between the parties that as a result of the intervention of BSE, 9,01,78,926 shares out of the ten crore unlisted shares were frozen and by that time the remaining 98,21,074 shares had already been sold to the lay investors in the market. In this background, the Board initiated proceedings both against DASL and BBL and their Directors and they were issued notices to show

cause why appropriate directions be not issued to them under section 11B of the Securities and Exchange Board of India Act 1992 including directions to restrain them from accessing the capital market for a suitable period. After completing the enquiry, the wholetime member of the Board by his order dated March 6, 2007 restrained, among others, DASL and its Directors, namely, Sh. Sarvesh Garg, Smt. Rita Garg, Sh. Prashant Rajgarhia and Sh. Rajendra Tare from accessing the capital market for a period of 7 years from the date of the order and they had also been restrained from buying, selling or dealing in securities in any manner directly or indirectly. It is against this order that the present appeal has been filed.

During the pendency of the appeal, the appellant (DASL) and its Directors filed an application before the Board for obtaining a consent order in terms of the circular dated April 20, 2007. The application was processed and the matter was placed for the consideration of the High Powered Committee set up by the Board to deal with such matters. The said committee considered the terms of consent offered by DASL and its Directors and after negotiations approved the revised terms of consent as offered by the applicants. Thereafter the matter was placed before two wholetime members of the Board who considered the terms of consent finally offered by the applicants alongwith the recommendations made by the committee and approved the same. After the revised terms had been approved by the wholetime members, the applicants as per their letter dated 21.6.2008 placed on record those terms. It was in response to this letter that DASL and its Directors received a communication dated July 22, 2008 from the Board asking them to move an application to seek approval of this Tribunal in terms of the aforesaid circular. It is in pursuance to this communication that DASL and its Directors have filed an application with a prayer that the appeal be disposed of as per the terms of consent offered by the applicants and approved by the committee and two wholetime members of the Board.

We have heard the learned counsel for the parties and have gone through the consent terms finally accepted by the Board. While approving the consent terms as finally

offered by DASL and its Directors, we modify clauses 4 and 5 as mentioned herein below:

- “4. We the Directors of DASL, namely, Sh. Sarvesh Garg, Smt. Rita Garg, Sh. Prashant Rajgarhia, Sh. Rajendra Tare and Sh. S.S. Rathi shall arrange to procure within six months commencing from August 1, 2008 from the market (including BBL) 98,21,074 shares of DASL and make those available with DASL to enable it to take steps for cancelling the same in accordance with law. We further undertake that till such time DASL files the petition before the concerned High Court for getting those shares cancelled, we shall not deal with those shares in any manner except for the purpose of complying with the consent terms.”
- “5. The bar imposed on DASL and its Directors by order dated 6.3.2007 would stand lifted on a petition being filed by DASL in the concerned High Court for getting the ten crore equity shares cancelled.”

Having modified clauses 4 and 5 of the consent terms we direct that as and when the Directors of DASL shall procure the shares from the market they shall deposit the same in an account to be specified by the Board within 1 week from today. The appeal and the Misc. applications no.27 and 60 of 2008 stand disposed of as above. It shall be open to either party to seek any further clarification if and when it becomes necessary. The letter dated 21.6.2008 alongwith its Annexures and also the letter dated July 22, 2008 which have been referred to hereinabove are taken on record.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

30.07.2008
pw