

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Appeal No. 170 of 2007**

**Date of decision : 29.8.2008**

Padmini Technologies Ltd.

..... Appellant

Versus

Securities and Exchange Board of India

..... Respondent

Mr. Shyam Mehta Advocate with Mr. Zal Andhyarujina Advocate and Mr. Ajai Fernandes Advocate for the Appellant.

Mr. Kumar Desai Advocate with Mr. Anant Upadhyay Advocate for the Respondent.

Coram : Justice N.K. Sodhi, Presiding Officer  
Arun Bhargava, Member  
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer

This order will dispose of four Appeals nos. 168 to 171 of 2007 filed by Padmini Technologies Ltd. (for short Padmini) and its three directors Parveen Kumar Jain, Vishnu Sarup Gupta and Vivek Nagpal in which common questions of law and fact arise. Main arguments were addressed in Appeal no. 170 of 2007 and, therefore, the facts are being taken from this case. The primary question that arises for our consideration is whether Padmini which made an allotment of equity shares to a select group of persons without receiving application/allotment money and issued false certificates to get those shares listed was a party to the manipulation in the price of the shares which were sold in the secondary market by Ketan Parekh and his entities.

2. Unusual price movement in the scrip of Padmini made the Securities and Exchange Board of India (hereinafter called the Board) raise its eyebrows. It ordered investigations with a view to ascertain the role of Padmini, its directors and other entities in the price movement and also to look into the possible violations, inter alia, of the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and

Unfair Trade Practices relating to Securities Market) Regulations, 1995 (for short the Regulations). Investigations revealed that Padmini had allotted on June 20, 1999, 1.8 crore shares to two sets of allottees on preferential basis. One set of allottees belonged to Kolkata and the other to Delhi and they will hereinafter for the sake of convenience be referred to as 'Kolkata allottees' and 'Delhi allottees' respectively. Delhi allottees also consisted of two groups one of which was controlled by one Shri Kishan Goenka and the other by V. B. Impex Pvt. Ltd. These two groups will also be referred to hereinafter as Goenka group and V.B. Impex group respectively, both of which were Delhi allottees. Investigations further revealed that Padmini had allotted these shares without actual receipt of application/allotment money and that these monies were received from these sets of allottees long after the allotment and after the shares had been listed on the Delhi Stock Exchange (DSE) and Bombay Stock Exchange (BSE). It also transpired that the Kolkata and Delhi allottees were mere name lenders in the entire preferential issue and that some of the Kolkata allottees sold their shares through one Sanjay Kumar Gupta and bills were raised in favour of other entities. Most of the Delhi allottees were found to have sold their shares to entities controlled by one Ketan Parekh. All these sales/transactions were carried out even before the shares were listed and they were mostly off-market. The Board also found during the course of the investigations that large number of shares issued by Padmini on preferential basis eventually reached the hands of Ketan Parekh entities which entities in turn had manipulated the market in a big way. As many as 73 entities excluding the four appellants before us were found to have colluded among themselves and with Ketan Parekh and his entities in manipulating the price of the scrip of Padmini. It is pertinent to mention here that the aforesaid Ketan Parekh and his entities were found by the Board to have manipulated the market in large number of scrips including Padmini and by order dated 12.12.2003 those entities including Ketan Parekh had been debarred from accessing the capital market directly or indirectly for a period of 14 years and that order was affirmed by this Tribunal on 14.7.2006 passed in Appeal no. 2 of 2004.

3. On the basis of the facts as found during the course of the investigations, the Board issued separate show cause notices to each of the entities found involved in the conspiracy to manipulate the price of the scrip of Padmini. In these appeals, we are concerned only with the show cause notices issued to Padmini and its three directors Parveen Kumar Jain, Vishnu Sarup Gupta and Vivek Nagpal who are the four appellants before us. The show cause notices issued to these four appellants are identical. Notice dated February 20, 2004 was issued to Padmini calling upon it to show cause why action be not taken against it and its directors for committing unfair trade practices relating to securities in violation of Regulations 3, 6(a) and 6(d) of the Regulations. They were further called upon to show cause why directions be not issued to them under section 11B of the Securities and Exchange Board of India Act, 1992 (for short the Act) read with Regulation 12 of the Regulations debarring them from associating with the capital market relating activities, dealing in securities and accessing the capital market for an appropriate period. The broad allegations that are made against Padmini and its directors are that they allotted shares on preferential basis to Kolkata and Delhi allottees without receipt of application/allotment money and these shares were allegedly sold in off-market transactions by the allottees to various entities including KP entities who later sold them in the secondary market and manipulated the price of the scrip of Padmini. It is also alleged that Padmini got the shares listed on different stock exchanges by presenting false certificates about receipt of funds against the allotment to facilitate trading in those shares. The funds allegedly received from KP entities and other buyers against sale of shares were channelized back to the original allottees for making payment towards application/allotment money. The show cause notice further alleges that after the original allottees received money against the sale of their shares, the cheques issued by them for payment against application/allotment were presented and realized by Padmini. The detailed manner in which this game plan was executed has been highlighted in the show cause notice and we shall refer to those details as and when necessary.

4. The appellants filed their detailed reply controverting all the allegations levelled against them and demanded cross-examination of some of the persons whose statements were recorded during the course of the investigations and relied upon by the Board in upholding the charges against them. The appellants appeared through a counsel before the whole-time member of the Board. On a consideration of the reply filed by the appellants and the material collected during the course of the investigations including the statements recorded by the investigating officer, the Board by its order dated 31.1.2007 found that the charges levelled against the appellants stood established and that they were guilty of violating the Regulations. The plea of the appellants that they were entitled to cross-examine the persons whose statements were being relied upon was rejected. It is not necessary for us to deal with this plea as the finding of the Board in this regard was not challenged before us. The Board, however, found that Padmini aided the allottees by giving them an unusual financial accommodation and also became a party to the subsequent manipulation of the shares by the KP entities. The allottees were held to be mere name lenders to whom allotment had been made without receipt of application/allotment money. It was also found that Padmini had issued false certificates to get those shares listed. This is what the Board has said in para 3.38 of the impugned order:

“The contention that it is not a party to contract for attracting regulation 2(c) of the FUTP regulations is not tenable as it has been discussed in detail above that by aiding the allottees (by way of unusual financial accommodation), not only it had violated the provisions relating to preferential allotment but also it had become a party to the subsequent manipulation of the shares of Padmini made by the KP entities. Therefore it is fairly established that by issuing certificates which were found to be false Padmini and its whole time directors have committed the violations of the provisions of 6(a) (d) of the FUTP Regulations.”

Again in para 3.43 this is what it has to say:

“From the above, it can be seen that all the allottees (who appear to be name lenders) were used by Padmini for the ultimate purpose of manipulating the market by allotting shares without the receipt of application/allotment money and by giving false certificate to the said effect. The period 1999-2000 was rife with dubious preferential allotments designed to manipulate the market. The one, the subject

matter of the order, was no exception and the attendant trappings with all tell-tale suspicious features as detailed supra do not leave any room for doubt that it was a fraud on the market in collusion with the name lenders and KP entities in creating artificial volume/price for luring the unsuspecting investors. In terms of Regulation 6(a) of the FUTP Regulations no person shall knowingly engage in any act or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in any securities. In this context, I note that the preferential shares of Padmini which were allotted to Kolkata and Delhi based allottees were subsequently transferred to the KP entities and were used for manipulating the market by KP entities by artificially creating volumes and price in the said shares. Further Regulation 6(d) of the FUTP regulations prohibits a person from indulging in falsification of books, accounts and records. In the present matter, it is fairly established that Padmini had issued false certificates and thereby DSE had given its approval for the listing of the shares allotted by Padmini on preferential basis, inter alia on the basis of the said certificates. It was also found that the said shares were subsequently used for manipulating the securities market to the detriment of genuine investors. In the process genuine investors were defrauded.”

It is against this order that the appellants have filed the four appeals which are being disposed of by this order.

5. We have heard the learned counsel for the parties. In a nut shell, the Board has found that the equity shares allotted to Kolkata and Delhi allottees were without payment of application/allotment money and that Padmini had issued false certificates to get those shares listed on the Delhi Stock Exchange and the Bombay Stock Exchange. It has also been found that most of the Delhi allottees had directly sold those shares to KP entities which in turn manipulated the price of the scrip in the market. The Kolkata allottees have also been found to have indirectly transferred their shares to some of the KP entities with the same object to enable KP entities to manipulate the market and that there was a big fraud to which Padmini and the allottees who were mere name lenders were a party along with KP entities for the creation of artificial volumes/price to lure the lay investors. The finding that Padmini had made irregular/illegal allotment to both sets of allottees without actual receipt of application/allotment money was not seriously challenged before us by Shri Shyam Mehta the learned counsel appearing for Padmini. This finding was,

however, challenged by Mr. Zal Andhyarujina, Advocate who appeared on behalf of the directors and we shall deal with his objection separately. The reason why Shri Mehta did not challenge this finding is that the same has been affirmed by this Tribunal in Appeal no. 55 of 2007 filed by Alok Khetan who is one of the Kolkata allottees. He was also served with a separate show cause notice and it was found that he had acted in nexus with Padmini and its promoters to enable them to make an irregular preferential allotment of shares and that 9 lac shares had been allotted to him beside other entities for cash at par without actual receipt of money which he sold to third parties even before they were listed and this was in contravention of the Securities Contracts Regulation Act, 1956. We affirmed these findings when we disposed of his Appeal on 17.7.2007. The finding that Padmini had issued false certificates for getting the shares listed has also not been challenged before us. It is pertinent to mention that Padmini had issued two certificates dated June 30, 1999 and November 30, 1999 to the stock exchanges certifying that it had realized the share application money aggregating to Rs.8,52,50,000/- and that the same had been credited to its account. These certificates are false because it is the admitted case of the parties that the amount was actually received between January and March 2000 after the shares had been listed and sold in the secondary market. It is also not in dispute that three out of six Goenka group of companies as referred to in Annexure 3 to the show cause notice had sold their shares to Panther Fincap and Management Services Limited (Panther) which is admittedly a company controlled by the aforesaid Ketan Parekh and these shares were used for manipulating the market in the scrip of Padmini. Interestingly, what happened was that after the shares were allotted without receipt of money, the three allottees namely, Cherry Marketing Ltd., Hermonite Consultants Ltd. and Cama Enterprises Ltd. sold them to Panther @ Rs.20/- per share. Two other entities of the same group sold them to Triumph International Finance Ltd. (Triumph) which is a close associate of Ketan Parekh. These sales were also @ Rs.20/- per share. The monies so received from Panther and Triumph were paid to Padmini as consideration for the shares allotted to the six Goenka group entities. However, what was seriously contested by Padmini was that even though it made irregular/illegal allotment of shares to the

allottees on preferential basis and it may have even issued false certificates to get those shares listed, it had no control over their subsequent sales by the allottees to third parties including KP entities and that, according to the learned counsel for Padmini, there was no material on the record to show that it (Padmini) was a party to the subsequent market manipulation in the scrip by Ketan Parekh and his entities. Having regard to the facts and circumstances of this case, we are unable to accept this contention raised on behalf of Padmini. Right from the word 'go', the actions of Padmini show a certain design which lead us to infer that it was a party to the entire game plan. As already noticed, it increased its subscribed capital under section 81(1A) of the Companies Act by allotment of further shares to a select group of allottees other than the promoters and did not receive any money. Why did it increase the subscribed capital when it was not to receive any money. It selected the group of allottees who/which were not willing to pay and as per their bank accounts, the statements of which were shown to us during the course of the hearing, they did not have sufficient funds either. The Board is right in holding that they were mere name lenders. Having done this, it went out of the way to issue false certificates to the stock exchanges. This clearly indicates its desire that the shares for which no money had been received should be traded in the market. Without listing, the shares could not be traded. We fail to understand why Padmini and its promoters were keen that the shares be traded at the earliest when those had been allotted to third parties. When we made this query from Mr. Shyam Mehta Advocate his answer was that Padmini wanted that the shares should get listed and traded at the earliest so that after they are sold, Padmini could get its money. This explanation shows that Padmini knowingly made the wrongful allotment without receipt of money. If Padmini was interested in its money, it should have picked up some other allottees who would have made the payment on allotment. That it did not do. We are in agreement with the findings recorded by the Board that the allotment made without receipt of money was a part of the larger game plan to enable the subsequent transferees like Ketan Parekh and his entities to play with those shares in manipulating the market. Admittedly, the shares were transferred to Ketan Parekh and his entities by the Delhi allottees and Padmini facilitated these transactions by issuing

false certificates to the stock exchanges for getting the shares listed. It is also a fact that the monies which the Delhi allottees received from Ketan Parekh entities on the sale of the shares was paid to Padmini towards application/allotment money. The entire circle is complete and we cannot agree with Mr. Shyam Mehta Advocate that Padmini was not a party to the subsequent manipulation of the scrip in the market. Padmini was primarily responsible for providing the raw material to KP entities to play in the market and this is the role that it played. Not only the Goenka group but even the V.B. Impex group on allotment of the shares sold to Class Credit Ltd. which is again a company controlled by Ketan Parekh. Here again, the shares were sold @ Rs.20/- per share and the monies so received were utilized for making payment towards allotment of some of the Kolkata allottees as well. It is thus clear that most of the amount that was received by Padmini between January to March 2000 for the allotment that was made in June 1999 came from Ketan Parekh entities. In these circumstances, it cannot be said that Padmini did not play any role in the manipulation of its scrip by Ketan Parekh and his entities. Mr. Shyam Mehta learned counsel for Padmini very vehemently challenged the finding recorded in the impugned order to the effect that Padmini was the mastermind behind the entire game plan. It is not necessary to find out as to who was the mastermind but the fact that Padmini was a party to the whole game plan is enough to uphold the impugned order.

6. We may now deal with the objection raised by Mr. Zal Andhyarujina learned counsel appearing for the Directors of Padmini. He contended that the allotment of shares made by Padmini in June 1999 was neither irregular nor illegal and that the allottees had issued cheques along with their applications for allotment which cheques were never dishonoured. He argued that payment by cheque is a valid payment and on the encashment of the cheque the payment relates back to the date of delivery of the cheque. While this principle is unexceptionable, we are unable to apply the same to the facts and circumstances of this case. A company cannot increase its subscribed capital without receipt of money from the allottees. Apart from the fact that it would frustrate the very purpose of issuing further shares, it would diminish the value of the existing



shareholding in the company and eat into investor wealth. It is only when the money from the allottees of any fresh issue of shares actually flows into a company, that the subscribed capital increases. If the money does not actually flow in and the amount of subscribed capital is increased in the books of the company, the total shareholder wealth obviously diminishes and so does the value of each share. In this view of the matter we cannot agree with the learned counsel that the allotment of shares without receipt of money is not irregular or illegal. It is true that the applications for allotment were accompanied by cheques which were never dishonoured but the understanding was that the cheques would be presented for encashment only when the allottees gave a green signal which they did after the shares were sold to KP entities. Admittedly, the cheques were encashed between January and March 2000 by which time the shares had been sold to KP entities and monies received. When we refer to the statements made by some of the Kolkata allottees during investigation, it becomes amply clear that the cheques issued were only for the sake of form and were not intended to be presented to the banks unless the original allottees sold the shares and received the consideration therefor. This was the whole game plan. These statements get support from the fact that the money eventually received by Padmini actually came from a handful of KP entities who had purchased the shares from the original allottees. In this view of the matter, we cannot but hold that Padmini was a party to the whole game plan which resulted in the manipulation of the price of its scrip by Ketan Parekh and his entities.

7. Before concluding, we cannot resist observing that in the matter of conducting enquiries against the entities who were found to have colluded among themselves and with Ketan Parekh and his entities in manipulating the price of the scrip of Padmini, the Board faulted in not holding complete and comprehensive enquiries at least against the Kolkata allottees. We say so, because those allottees had come up in appeal before us against the order imposing penalty on them. After conducting a detailed investigation into the trading of the scrip of Padmini, the Board had unearthed the entire game plan referred to in the earlier part of our order. The Board found that as many as 73 entities

(not counting the present appellants) were involved and it decided to issue separate show cause notices to each of them including the Kolkata allottees. What distresses us is that while issuing show cause notices to them, the Board did not charge them with collusion with Ketan Parekh and his entities in manipulating the scrip of the company after they had received irregular allotment from Padmini though a common order was passed against all the 73 entities holding them guilty of such collusion. Obviously, when the Kolkata allottees came up in appeal, the finding of collusion against them could not stand in the absence of a charge and the quantum of punishment imposed on them had to be considerably reduced. Same appears to be true of Mr. Sanjay Kumar Gupta who was only alleged to have played some role in the disposal of the shares initially allotted to the Kolkata allottees but was not charged for collusion with Ketan Parekh entities. We cannot say anything about Delhi allottees as they did not come up in appeal before us. We only wish that the Board had framed proper show cause notices with greater attention to the specific circumstances attaching to each of the delinquents and leave the matter at that.

For the reasons recorded above, all the appeals fail and they stand dismissed with no order as to costs.

Sd/-  
Justice N.K. Sodhi  
Presiding Officer

Sd/-  
Arun Bhargava  
Member

Sd/-  
Utpal Bhattacharya  
Member

29.8.2008  
ddg/-