BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 146 of 2010

Date of decision: 12.8.2011

1) Parsoli Corporation Limited
2) Zafar Sareshwala
3) Uves Sareshwala

All having office at 402-403, 4th Floor,
325, Amba Sadan, Linking Road, ……Appellants
Khar (W), Mumbai – 400 052.

Versus

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

Mr. Shyam Divan, Senior Advocate with Ms. Sonal, Ms. Aditi Prabhu and
Mr. Waseem Pangarkar, Advocates for Appellants.

Mr. Darius Khambatta, Additional Solicitor General with Ms. Harshada Nagare and
Mr. Aditya Mehta, Advocates for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S.S.N. Moorthy, Member

Per : Justice N. K. Sodhi, Presiding Officer

This order will dispose of nine Appeals no. 112, 113, 145, 146, 150 of 2010 and 77, 80, 81, 82 of 2011 all of which have been filed by Parsoli Corporation Ltd. and/or its promoters/promoter group. These were heard together one after the other and the learned senior counsel appearing for the appellants has divided these appeals in 3 different groups and addressed arguments group wise. We shall deal with the appeals falling in each group in the same manner. It is pertinent to mention that out of these nine appeals, five Appeals no. 112, 113, 145, 146 and 150 of 2010 had earlier come up for hearing before this Tribunal and these were dismissed by a common order dated January 12, 2011. The appellants in these five appeals filed civil appeals in the Supreme Court which came up

for hearing on May 2, 2011 and the order passed by this Tribunal was set aside and the cases remitted with a direction to pass separate orders in each of the five appeals. As observed above, we are dealing with these appeals group wise as stated by the learned senior counsel for the appellants. Learned Additional Solicitor General appearing for the respondent Board has no objection to the disposal of the appeals in the manner as suggested by the appellants.

Group I

Appeals no.146, 112 and 113 of 2010 constitute this group as they arise out of the same set of facts and allegations.

2. Did Parsoli Corporation Ltd. (hereinafter referred to as Parsoli) and its promoters/directors defraud its shareholders by transferring their shares in their own demat accounts on the basis of forged signatures and forged/duplicate share certificates and when caught, compensate the shareholders by crediting back in their demat accounts shares through off market transactions is the primary question that arises for consideration in this group of appeals. Facts as they emerge from the record are these.

3. Parsoli is a public limited company and its shares are listed, among others, on the Bombay Stock Exchange Ltd., Mumbai (BSE). Zafar Yunus Sareshwala and Uves Yunus Sareshwala are its managing director and joint managing director respectively. Sareshwalas including these two directors are the promoters of Parsoli and they hold 87.59% of its shares. It carried on the business of non-banking finance company and was also a stock broker on the National Stock Exchange Ltd. and BSE. Parsoli was also a depository participant affiliated to the Central Depository Services (India) Ltd. and was providing depository services to its clients. Regulation 53A of the Securities and Exchange Board of India (Depositories and Participant) Regulations, 1996 requires that every listed company shall ensure that all matters relating to its transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories are handled and maintained at a single point either in-house by the issuer company or by a share transfer agent registered with

the Securities and Exchange Board of India (for short the Board). Parsoli appointed on April 25, 2003 Pinnacle Shares Registry Pvt. Limited as its share transfer agent for handling the share transfer work and it shall be referred to hereinafter as RTA. It was registered with the Board as a share transfer agent.

4. The Board carried out investigations, inter-alia, in the matter of fraudulent transfer and demat of shares of Parsoli on the basis of forged documents. Investigations revealed that 80,800 shares of 252 shareholders held in physical form had been transferred in the names of persons who belonged to the promoter group on the basis of fake share certificates and forged signatures of shareholders. The modus operandi adopted by Parsoli and its directors was that they retained the specimen signature cards of shareholders with them and did not furnish the same to the RTA and that they were verifying the signatures of the transferors and also the genuineness/correctness of the share certificates. Parsoli had set up a committee of its directors for the purpose and after the committee verified the signatures and genuineness of the share certificates, RTA would formally effect those transfers. It is pertinent to mention that this practice was illegal and contrary to the aforesaid regulations. Parsoli had directed the RTA to effect transfer of shares on the basis of signature verification done by the former and assured the latter that in case of any complaint, Parsoli would take the responsibility and compensate the shareholders. During the course of the investigations, Parsoli, its managing director and joint managing director had been asked to provide details of the process by which the shares were being transferred. By letter dated July 19, 2008, Parsoli furnished the minutes of the meeting of the share transfer committee of its directors held on January 31, 2004. Parsoli was then asked to provide the complete documents showing the transfer of shares and the procedure followed to which it replied by its letter of August 11, 2009 that "**We only have in our possession minutes of the Board meeting held as on January 31, 2004. The other disclosures are not with us."** The managing director of Parsoli appeared before the investigating officer on August 5, 2008 and several questions were put to him soliciting information in this regard. He undertook to furnish the information by August 8, 2008 which was never done. From all this it was

inferred that Parsoli and its managing director and joint managing director both of whom were members of the share transfer committee were not co-operating with the investigations. On completion of the investigations, the appellants were served with a notice dated June 10, 2009 alleging that Parsoli, its managing director and joint managing director were involved in printing/issuing fake share certificates, forging of signatures of genuine investors on the transfer documents, verification of those fake share certificates and forged signatures, approval of fraudulent transfers and ultimately dematerialising those fake share certificates in the names of promoters and their front entities on the basis of forged documents. It was also alleged that Parsoli and its aforesaid two directors did not handover the specimen signature cards to the RTA and did not maintain records relating to transfer of securities at a single point. It was also pointed out that Parsoli and its directors did not provide complete and material information to the Board during the course of the investigations and thereby violated the provisions of section 11C of the Securities and Exchange Board of India Act, 1992 (for short the Act). The show cause notice also alleged the violation of regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and regulations 53A and 54(5) of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 (hereinafter referred to as FUTP Regulations and the depository regulations respectively). Some other charges were also levelled and since those have not been established, it is not necessary to refer to those. The appellants were called upon to show cause why action be not taken against them under sections 11(4) and 11B of the Act which may include debarring them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period of time. For the aforesaid illegalities that came to light during the course of the investigations, the Board also decided to initiate adjudication proceedings against Parsoli and its promoters and other front entities for imposing monetary penalties. Accordingly, notice dated July 17, 2009 was issued to as many as 17 entities including Parsoli and its promoters pointing out the same illegalities as aforesaid and asking them to show cause why penalty

be not imposed on them under section 15HA of the Act and section 19H of the Depositories Act, 1996. On receipt of the aforesaid notices, the appellants did not file any reply to the show cause notice dated June 10, 2009 before the whole time member. However, they filed their reply before the adjudicating officer to the show cause notice dated July 17, 2009 denying all the allegations. The appellants appeared before the whole time member and were given a personal hearing and they filed their written submissions which could be treated as their reply to the allegations levelled against them in the show cause notice. The whole time member and the adjudicating officer conducted separate proceedings and on the basis of the material collected by them during the course of the enquiry and also the material that was collected during the investigations, they both found the appellants guilty of the charges levelled against them. By order dated July 27, 2010, the whole time member recorded his findings against the appellants in the following words:

> "10. In light of the above findings, I find that the noticees:
>
> 10.1 By not providing information to SEBI and giving misleading and contradictory information, have violated the provisions of Sections 11C(2) and 11C(3) of SEBI Act, 1992;
>
> 10.2 By not handling and maintaining the share transfer related work at a single point, violated Regulations 53A of the SEBI (Depositories and Participants) Regulations, 1996 and SEBI Circular no. D&CC/FITTC/Cir-15/2002 dated December 27, 2002; and
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> 10.3 By engaging in issuance of 80,800 fake share certificates, forging signatures of genuine investors on the transfer documents, verifying those fake share certificates, approving fraudulent transfer and dematerialization of those fake share certificates in favour of 22 promoters/front entities, violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(h) of the PFUTP Regulations."

In view of these findings, the whole time member issued the following directions to the appellants under sections 11(4) and 11B of the Act:

> "12. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(4) and 11B thereof, hereby
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> (a) restrain Parsoli Corporation Ltd. (Permanent Account Number: AABCP9030F), Mr. Zafar Yunus Sareshwala (Permanent Account Number: ANYPS8494D) and Mr. Uves Yunus Sareshwala (Permanent Account Number: AOFPS5856M) from buying,

selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a period of seven years from the date of this Order (except for complying with directions mentioned at (c) below);

(b) restrain Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala from holding the position of Director in any listed company for a period of seven years from the date of this Order;

(c) direct Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order;

(d) direct BSE to facilitate valuation of shares to be purchased as at (c) above, and compulsorily delist Parsoli Corporation Ltd., if the public shareholding reduces below the minimum level in view of aforesaid purchase."

Feeling aggrieved by these directions, Parsoli and its two directors have filed Appeal no.146 of 2010.

5. The adjudicating officer has also found the appellants and their front entities guilty of all the charges levelled against them in the show cause notice dated July 17, 2009 and by his order dated May 5, 2010, he imposed the following monetary penalties on them:

"Having regard to the nature and gravity of the charges established and after taking into account the factors contained Section 15J of the SEBI Act, 1992 and other statutory provisions I hereby impose the following monetary penalties in exercise of the powers conferred as Adjudicating Officer.

(i) a consolidated penalty of Rs. 25 lakhs on Parsoli Corporation Limited, Mr. Zafar Sareshwala, Managing Director and Mr. Uves Sareshwala, promoter / Director under Section 15A(a) of the SEBI Act, 1992 for the violation of Section 11C(2) and (3) of SEBI Act.

(ii) a consolidated penalty of Rs. 3 crores on the promoters' family of Sareshwalas comprising of (a) Mr. Zafar Sareshwala, Managing Director (b) Mr. Uves Sareshwala, (c) Mr. Talha Yunus Sareshwala and (d) Mr. Saleha Mohammed Yunus Sareshwala under Section 15HA of SEBI Act, 1992 for the violation of Regulations 3 (a) to (d), 4(1) and (2) (h) of the SEBI (FUTP) Regulations, 2003 and under Section 19G of the Depositories Act, 1996 for the violation of Regulation 53A of the SEBI (DP) Regulations.

(iii) a consolidated penalty of Rs. 70 lakhs on the Kothawalas family comprising of (a) Mohammed Alibhai Kothawala (b) Amena

Maksud Kothawala (c) Fatema Mukhtar Kothawala (d) Maksud Yusufbhai Kothawala (e) Mariam Yusuf Kothawala (f) Mukhtar Yusufbhai Kothawala (g) Yusufbhai Umarbhai Kothawala under Section 15HA of SEBI Act, 1992 for the violation of Regulations 3 (a) to (d), 4 (1) and (2) (h) of the SEBI (FUTP) Regulations, 2003.

(iv) a penalty of Rs. 10 lakhs each on (a) Gulam Rasool Mohiuddin Bombaywala (b) Iftekhar Mohammed Yusuf Mansoori (c) Aslamkhan Rehmatkhan Pathan (d) Abdul Hameed Abdul Gaffer Memon (e) Absuldamad Abdul Gaffer Memon under Section 15HA of SEBI Act, 1992 for the violation of Regulations 3 (a) to (d), 4(1) and (2) (h) of the SEBI (FUTP) Regulations, 2003."

Parsoli has filed Appeal no.112 of 2010 against this order whereas the promoter group including the aforesaid two directors of Parsoli have filed Appeal no.113 of 2010 challenging the same order. The front entities of Parsoli and its promoters have not come up in appeal and we are not concerned with them in these appeals.

6. We have heard the learned senior counsel on both sides who have taken us through the record and the impugned orders. At the cost of repetition, it may be mentioned that in both the orders dated May 5, 2010 and July 27, 2010 the appellants and their front entities have been found guilty of the same charges and the whole time member has issued directions to the appellants under sections 11 and 11B of the Act with a view to regulate the securities market and prevent them from committing such acts in future and the adjudicating officer has imposed monetary penalties on them for those very wrongs. The main arguments were addressed in Appeal no. 146 of 2010 filed by Parsoli and its two directors and we shall first deal with the contentions raised by the learned senior counsel in this appeal.

7. The learned senior counsel for the appellants has raised three contentions. Firstly, he has very strenuously challenged the directions issued by the whole time member in paragraph 12(c) and (d) of the impugned order by which the two directors of Parsoli namely, Zafar Yunus Sareshwala and Uves Yunus Sareshwala have been directed to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the price as determined in the manner prescribed in regulation 23 of the delisting regulations framed by the Board. The direction in para

12(d) is only consequential and if, on the implementation of the direction in para 12(c), the public shareholding of Parsoli falls below the minimum required to be maintained, then it has to be delisted compulsorily. It is urged that these directions are ultra vires sections 11 and 11B of the Act and beyond the show cause notice. The second argument of the learned senior counsel is that the restraint orders issued in paras 12(a) and (b) by which the appellants have been restrained from accessing the securities market directly or indirectly for a period of seven years and restraining the two directors from holding the position of a director in any listed company for the same period are also arbitrary, perverse and *ultra vires* sections 11 and 11B of the Act. The third submission of Shri Shyam Divan, senior advocate is that the appellants did not commit any fraud when the shares were transferred to the demat accounts of the promoters of Parsoli and their front entities. According to the learned senior counsel, the findings of '**fraud**' and '**carefully crafted strategy**' recorded in the impugned order are without any basis since the erroneous transfers had been detected by the management itself and corrective measures taken to recompense all genuine shareholders even before the Board was seized of the matter. We shall deal with these submissions one by one.

8. We shall first discuss the third submission which is the heart of the matter. As noticed in the earlier part of our order, the question for our consideration is whether the appellants played a fraud with their innocent shareholders and fraudulently transferred their shares in their own demat accounts. The learned senior counsel contended before us that the appellants did not play any fraud and that their action could, at the most, be termed as an 'aberration' which did not justify the issuance of the directions that have been given by the whole time member. Let us examine whether he is right. To begin with, we may mention that at no stage of the proceedings before the Board and not even in the memorandum of appeal have the appellants admitted that they had done any wrong much less played fraud on their shareholders and that they have been justifying their conduct all through. During the course of the hearing before us, when the learned senior counsel for the appellants was confronted with the documentary material available on the record regarding the transfer of shares which is being dealt with hereafter, he fairly

admitted that there was some wrongdoing on the part of the appellants when the shares were transferred to the demat accounts of promoters of Parsoli and he wanted us to treat the conduct of the appellants as an 'aberration'. Documents on record, however, tell a different story.

9. The fact that after appointing the RTA as an independent record keeper, Parsoli did not furnish the specimen signature cards of its shareholders to it (RTA) and that Parsoli was verifying the signatures of the shareholders at its own level through an in-house committee of directors on the basis of which RTA was formally effecting transfers is not in dispute. It is also not in dispute that all the 80,800 shares pertaining to 252 shareholders which are now in issue were transferred by the directors in their own names or their front entities and got them dematerialised and later when the shareholders applied for the dematerialisation of the shares held by them in physical form, the directors compensated them (shareholders) by crediting shares from their demat accounts to the accounts of the shareholders. We have perused the transfer documents carefully and find that the shares were transferred by the directors on the basis of forged signatures of the shareholders and also on the basis of forged/duplicate share certificates. This is an open and shut case and the charge of fraudulent transfer of shares stands established on the appellants' own showing. This is what a few transfer documents that we have perused as a sample reveal. One Deepakbhai S. Shah purchased on October 13, 1995, 100 shares of Parsoli from Indulal Shah and Shashank Indulal Shah who were then the joint holders. These shares were transferred in the name of Deepakbhai S. Shah on December 5, 1995 and it is common case of the parties that he has been holding these shares since then in physical form. The share transfer form on the basis of which the shares were transferred to him bears his signatures as a transferee which are not in dispute. By a share transfer form dated July 29, 2005, the shares held by Deepakbhai S. Shah were transferred in the name of Mohammed A. Kothawala who is, admittedly, an associate of Parsoli and its directors. This form also purports to have been signed by Deepakbhai S. Shah as a transferor. His signatures after verification by the transfer committee have been certified by the authorized representative of Parsoli with its official

stamp and initials. One does not need to go to a handwriting expert to say that the signatures on the two transfer deeds, one where Deepakbhai S. Shah is signing as a transferor and the earlier one which he signed in the year 1995 as a transferee do not match. The two forms were shown to the learned senior counsel for the appellants and, to be fair to him, he admitted that the signatures were not the same. Since the signatures are not the same, it is obvious that the share transfer form of July 29, 2005 on the basis of which the shares were transferred from the name of Deepakbhai S. Shah to an associate of Parsoli had forged signatures of the transferor (Deepakbhai S. Shah). It was for Parsoli and its directors to explain as to who signed the transfer form as transferor and on what basis did they verify his signatures. No explanation has been furnished in this regard. Again, shares in the physical form could not be transferred without the original share certificate(s) being attached to the share transfer form(s). The original share certificate(s) were with Deepakbhai S. Shah as will be seen hereafter. Then which were the share certificates accompanying the share transfer form on the basis of which Parsoli transferred the shares. They cannot but be duplicate/forged share certificates. Here also Parsoli and its directors owe an explanation but there is none forthcoming. It is interesting to note that the form dated July 29, 2005 does not record the date of approval nor does it record the transfer number as entered in the register of members/transfers. Be that as it may, even though the shares standing in the name of Deepakbhai S. Shah had been transferred fraudulently as aforesaid in the name of a front entity of Parsoli, the former continued to hold the original share certificate(s) in the physical form. He then applied on September 22, 2005 for the dematerialisation of his shares and his request was rejected by RTA on the ground "**Original certificates present are those for which the duplicates have already been issued**." Interestingly, Parsoli decided to compensate Deepakbhai S. Shah and sent a communication to him dated May 31, 2006 in this regard giving altogether a different reason from that of RTA for rejecting his request for dematerialisation. This is what Parsoli wrote to Deepakbhai S. Shah:

> "Above referred DRN has been rejected by our RNT under Code-13 Misc – "Certificate received is already stands demated in our system. Please contact company for further details."

> We have taken necessary steps to compensate you considering that your request seems to be genuine. We have already credited above referred account by off market transaction. Xerox copy of delivery slip is enclosed and request you to verify with your DP. Hence your problem is resolved."

It is, thus, clear that when Deepakbhai S. Shah approached Parsoli for the dematerialization of his shares, the latter found his request to be genuine. If his request was genuine then the earlier transfer on the basis of the share transfer form dated July 29, 2005 was obviously based on forged signatures and documents. We also find from the letter written to Deepakbhai S. Shah that it was in a standard form and his name and other details were written in hand and similar letters had been written to the other shareholders as well and all this was done to resolve their problem that had arisen out of fraudulent transfer of their shares. We also note that the reasons given by the RTA and Parsoli for rejecting the request of Deepakbhai S. Shah for dematerialization are different. The fraudulent conduct of the appellants is writ large from the fact that the directors of Parsoli had themselves verified the forged signatures of the transferor and then transferred the shares to their own entities. Their fraudulent conduct is further established when they compensated Deepakbhai S. Shah by transferring shares to his demat account in off market transaction(s). If the shares had earlier been transferred bona fide in the name of Mohammed A. Kothawala (front entity of Parsoli), then where was the need to compensate Deepakbhai S. Shah. The directors were conscious that they had deprived him of his shares fraudulently and compensated him to purchase his silence only after he applied for dematerialization of his shares. Transfer of shares from the name of Deepakbhai S. Shah to Mohammed A. Kothawala is not a solitary instance. We have perused by way of sample 9 sets of share transfer documents and find that the signatures of the transferor (shareholder) on the transfer forms do not tally with the admitted signatures. During the course of the hearing on June 24, 2011, copies of the 9 sets of transfer documents were furnished to the learned counsel for the appellants to enable him to seek instructions from his clients. Since the original share certificates in all cases were in the possession of the shareholders and shares had been transferred on the basis of some other certificate(s), we directed the appellants to file an affidavit as to who produced

before Parsoli the transfer documents including the share certificate(s) and whether those were forged or duplicate. When the hearing resumed on June 27, 2011, the appellants sought to file a detailed affidavit but the queries made by us remained unanswered and the affidavit dealt with issues not relevant to the queries and, therefore, we declined to take the same on record. As regards the transfer documents which had been furnished to the appellants on the previous date of hearing, the learned senior counsel very fairly conceded that the signatures of the transferor (shareholder) on the transfer forms did not tally with his admitted signatures. Since Parsoli has not explained as to who produced the transfer documents, it is reasonable to infer that the transfer documents bearing forged signatures of the shareholders were prepared by Parsoli and its directors and they also prepared forged/duplicate share certificates which they themselves certified as true on the basis of which the RTA formally effected the transfers. We have some other instances as well where shares were fraudulently transferred in the accounts of the directors of Parsoli on the basis of share transfer forms which do not bear any signature of the transferee. We have on record share transfer form No.105794 transferring shares from the name of one Prabhudas P. Prajapati in the name of Mohammed A. Kothawala and the transferee has not signed the form. There are several instances of this type. We are satisfied that transfer deeds with no signatures at all and with single signature in case of joint signatures were cleared for transfer by the committee of directors set up by Parsoli and all this was done to defraud the shareholders. As many as 252 shareholders holding 80,800 shares in physical form had been deprived of their shares in the aforesaid manner. This conduct of the appellants, in our opinion, is one of the grossest forms of frauds known to the securities market and cannot be described as an aberration. We are in agreement with the whole time member that Parsoli and its directors had a carefully crafted strategy by which they played fraud on their shareholders.

10. The “carefully crafted strategy’ of the appellants is further borne out from the fact that even after appointing the RTA, Parsoli did not hand over to it the specimen signature cards of the shareholders for verification of their signatures and instead retained the same with itself. Having appointed the RTA, it was no business of Parsoli and its directors

either to retain the specimen signature cards with them or verify the signatures of the transferors through an in-house committee. They did this only to verify the signatures of the transferors which they were themselves forging. Their intention to defraud the innocent shareholders is, thus, manifest from the very beginning. A share transfer agent is an independent record keeper of the issuer company and an intermediary of the securities market and is registered with the Board and its activities are regulated by the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993. The primary duty of a share transfer agent is to maintain the records of holders of securities issued by a body corporate and he has to deal with all matters connected with the transfer and redemption of its securities. The appellants did not allow the RTA to perform its primary duty by retaining with them the specimen signature cards. The depository regulations mandate that all work relating to share registry in terms of both physical and electronic shares should be maintained at a single point i.e. either in-house by the company or by a share transfer agent registered with the Board. On the appellants' own showing, this was not done. They admit that the signature verification was done by Parsoli itself and transfers were effected by RTA. It is, thus, clear that share transfer records were maintained at two different places and this violated the provisions of regulations 53A and 54(5) of the depository regulations. This violation was knowingly committed for achieving the object of defrauding the shareholders. It may be mentioned that separate proceedings were initiated against the RTA as well and by order dated October 14, 2009, its certificate of registration was cancelled which order was upheld by this Tribunal. To justify the retention of specimen signature cards, the appellants have taken contradictory stands. Before the whole time member, their stand was that these cards had not been furnished to the RTA as those were in torn condition. The learned counsel for the appellants took the same plea before us during the course of the hearing. However, in paragraph 6.85 of the memorandum of appeal, the appellants also state "**that the specimen signature cards were not handed over to the share transfer agent for better operational and administrative control**." Both these reasons cannot go together. Be that as it may, during the course of the hearing we directed the appellants to produce

the original specimen signature cards of the shareholders for our perusal which they did. We have examined these cards and find that a large number of them are in perfect condition whereas some others have been torn and even from among the torn ones, the signatures can be tallied/verified and this is what Parsoli was doing. We wonder, if Parsoli could verify the signatures then why the same could not be done by the RTA which was meant to carry out that work. It is interesting to note that there were some issues between Parsoli and RTA regarding the transfer of shares and a discussion took place between the two of them whereafter Parsoli by its letter of August 16, 2005 clarified the doubts and this is what it wrote to the RTA:

> "We refer to the personal discussion our Mr. Zafar Sareshwala had with you and also Mrs. Nazima during her personal visit on 12.8.2005 for verification/explanation of transfer deed submitted by the company for transfer of shares so as to clear certain doubts. In the matter we clarify the matter and explain the same as under:-
>
> SIGNATURE AUTHENTICATION:
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> 1) Signature record is with the company and as it is on torn condition and not properly maintained and as such it is difficult/problematic to hand over the same to R&T.
>
> In view of the above share certificates with Transfer Deed received either at your place or at our place, are being forwarded to us for signature verification at our end and after verification for identification purpose we are putting round stamp of the company and initialed by our authorised officer Mrs. Nazima of the company. **When such TD with original share certificates are received and signatures are verified by us we certify the same as correct and it is to be transferred in favour of transferee and if any complaint is received later on from any party/holder for transfer of shares or otherwise on the basis of forged signature or otherwise it will be our responsibility. We undertake our full responsibility to compensate the holder/transferee/R&T.**
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> - In majority of the cases shares received for transfer are of off market transaction and backside of TD does not contain the stamp of broker. However, we verify the genuineness of signature/s for correctness of signature on such TD and authenticated by us. When shares are transferred on such verification it is the responsibility of the company to compensate the deprived shareholder/holder in due course, if any complaint is received for forged signature/otherwise on TD and for issue of duplicate shares.
>
> 2) Our attention is drawn by you that many time you have observed that share certificates so issued on 6th April, 1995, though it is printed on same day, colour of the share certificates are different and specimen of which are enclosed.

> When we authenticate the TD for verification of signature of the transferor we are also scrutinizing the genuineness/correctness of certificates of blue colour and other colour and put signature of authorised officer on TD and send you the certificate/s with TD. We clarify that such types of certificates of different colours are issued, printed and signed by authorised signatory of the company and they are valid certificates for transfer.
>
> 3) If later on any complaint is received from any party or we receive the certificates for transfer, which have already been transferred earlier, we undertake the full responsibility to compensate such proposed transferee/holder who has bought the shares. If received at your end, please send such type TD with certificates to us for resolving the complaint and we will take necessary action in the matter. We assure and undertake that necessary action will be taken to compensate the purchaser/holder holder in due course/R&T if it is found to be genuine."

A reading of the aforesaid letter leaves no room for doubt that Parsoli was anticipating some complaints/claims regarding transfer of shares on the ground of forged signatures/share certificates and took full responsibility for the same. It assured the RTA that if any subsequent complaint/claim was made not only would Parsoli be responsible for the same but it would also compensate the purchaser/holder/holder in due course/R&T. If the shares were being transferred bona fide in the ordinary course, as companies normally do, there should not have been any occasion for Parsoli to anticipate such complaints/claims. This letter lets the cat out of the bag and makes it clear that Parsoli had a fraudulent intention right from the beginning. The more we look into the conduct of the appellants the more we are satisfied that they acted fraudulently right from the word go.

11. Mr. Shyam Divan, Senior Advocate contended that there was no fraud committed by Parsoli and its directors because the 'erroneous transfers', as he wants to put it, had been detected by the management and corrective measures were taken to recompense all the shareholders much before the Board was seized of the matter and that there were no complaints from any shareholder regarding the fraudulent transfer of shares. He also argued that 'fraud' is a very serious charge and conclusions in regard thereto cannot be reached on the basis of preponderance of probabilities or on the basis of surmises and/or conjectures as has been done by the whole time member in the impugned order. We are unable to agree with the learned senior counsel. We have discussed in the earlier part of

our order the manner in which the shares were being transferred and the fraudulent intent of Parsoli which was manifest from the very beginning. In view of our discussion above, we cannot agree that the transfers were erroneous'. They were in fact fraudulent. Parsoli started compensating the shareholders only after they come forward to get their shares dematerialised/transferred. It did not do it on its own as was sought to be argued before us. It is true that no shareholder complained against Parsoli for the fraudulent transfer of his shares and this is because when he applied for transfer/dematerialisation of his shares, the directors of Parsoli realized that they would be caught and before that could happen they compensated him by transferring shares from their own demat accounts to his account and this is how Parsoli purchased his silence. Let us not forget that all the shareholders whose shares were fraudulently transferred were small shareholders who were satisfied when they received their shares back and did not consider it worthwhile to pursue the matter further. Merely because there were no complaints does not mean that the appellants did not commit any fraud. We agree that fraud is a serious charge but we do not agree with the learned senior counsel that in civil proceedings like the present, it cannot be established on preponderance of probabilities. In civil proceedings, unlike in criminal proceedings, even a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious higher has to be the degree of probability to establish the same. Having regard to the manner in which the appellants conducted themselves in transferring the shares of the innocent shareholders, we are satisfied that the charge of fraud in the present case has been established with the required degree of probability. It was also argued by Shri Divan that the promoters of Parsoli who held 87.59 per cent of the total shares could not have had any motive to fraudulently transfer small numbers of shares in their own accounts. It is contended that the appellants made no profit nor was any shareholder put to loss and, therefore, the whole time member was wrong in recording a finding against the appellants. These contentions of the learned senior counsel are equally without merit. In civil proceedings of the kind we are dealing with, it is not necessary to establish the motive of the wrongdoer nor is it necessary to prove mens rea [see Shriram Mutual Fund vs. SEBI AIR

2006 SC 2287). Having said this, we cannot say that the appellants did not have a motive. They could well have had one and it is not necessary for us to go into this question. The fact that the total number of shares transferred constituted only a small percentage of the total shareholding of the company (Parsoli) is also irrelevant in our opinion. What has been established on the record is that 80,800 shares held by 252 shareholders were fraudulently transferred on the basis of forged signatures of the transferors and forged/duplicate share certificates. What percentage they bear to the total shareholding of the company is not relevant. The learned senior counsel for the appellants also pointed out that irregularities in the matter of transfer of shares occurred as records of Parsoli were destroyed in the earthquake in January, 2001 and the riots in February, 2002 in Gujarat. This argument is equally baseless. The only record that was essential for the transfer of shares and which ought to have been handed over to the RTA was the specimen signature cards of the shareholders from where the signatures of the transferors could be tallied/verified. This record is very much available with the appellants and the same was produced before us and, as pointed out earlier, most of it was in good condition and some of the signature cards were torn but the signatures could be tallied. The argument that the whole time member erroneously held that the appellants had printed/issued fake share certificates also cannot be accepted. It is now the admitted case on both sides that when the shares were transferred, the original/genuine share certificates were in the possession of the shareholders and yet their shares were transferred on the basis of some other share certificates which could not but be forged/duplicate. The appellants owe an explanation in this regard. They did not explain to the Board whether the share certificates on the basis of which the transfers were effected were forged/duplicate. Even to a query put by us, we did not get any answer. The only inference that can be drawn is that the appellants prepared those forged/duplicate share certificates in order to effect transfers. We cannot find fault with the findings recorded by the whole time member in this regard. In this view of the matter, we cannot but hold that the appellants committed fraud of the worst kind and their conduct, to say the least, was heinous and we answer the question posed in para 2 above in the affirmative. Persons like

the appellants should have no place in the securities market if its integrity is to be preserved. In view of these findings of ours, we have no hesitation to hold that the appellants have violated regulations 3 and 4 of the FTUP Regulations. These regulations prohibit a person from directly or indirectly buying, selling or otherwise dealing in securities in a fraudulent manner. They also prohibit a person from indulging in a fraudulent or an unfair trade practice in securities. The conduct of the appellants as depicted above clearly falls within the prohibitions contained in these provisions and the whole time member was right in holding them guilty of violating them. We are also satisfied that the appellants had knowingly violated the provisions of regulations 53A and 54(5) of the depository regulations and the Board's circular dated December 27, 2002 by not maintaining records of holders of securities, handling of their physical securities and establishing connectivity with the depositories at a single point and despite having appointed the RTA, the appellants continued to retain with them the specimen signature cards of the shareholders.

12. Having dealt with the third contention of the learned senior counsel for the appellants and in the light of the findings that we have recorded thereon, we shall now deal with his other two contentions as noticed in para 7 above. We have found that the appellants by issuing fake certificates, forging signatures of genuine investors on the transfer documents, verifying those fake certificates and forged signatures and approving fraudulent transfers and dematerializing those shares in favour of promoters/front entities of Parsoli, have violated regulations 3 and 4 of the FUTP Regulations. Since the conduct of the appellants in transferring shares has been found to be fraudulent, the whole time member has restrained them from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market for a period of seven years from the date of the impugned order. In addition, Zafar Sareshwala and Uves Sareshwala (appellants no. 2 and 3) have also been restrained from holding the position of a director in any listed company for a period of seven years from the date of the order. Shri Shyam Divan, Senior Advocate has strenuously argued that these directions are *ultra vires* section 11(4) and section 11B of the Act besides being arbitrary and perverse. The

argument is that since the wrong doing by Parsoli was not in its capacity as a stock broker or a depository participant, it could not be restrained from carrying on such activities in the market. In other words, it is submitted that Parsoli as a listed company could be issued some directions but it could not be restrained from operating as a stock broker or a depository participant in the securities market. It is urged that if Parsoli had done some wrong as a stock broker or as a depository participant, action could be taken against it under section 12(3) of the Act after complying with the procedural requirements prescribed in Securities and Exchange Board of India (Intermediaries) Regulations, 2008 but no directions could be issued to it under sections 11 and 11B as aforesaid. We have given our thoughtful consideration to the different facets of the second argument of the learned senior counsel and find no merit in any of them. Before we deal with the arguments, it is necessary to refer to the relevant provisions of sections 11 and 11B of the Act on which the argument of the learned senior counsel is based.

> "11. **Functions of Board –**
> (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.
>
> (2) and (3)……..
>
> 4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:-
> (a) suspend the trading of any security in a recognized stock exchange;
> (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
> (c) to (f) …….....
>
> 11B. **Power to issue directions**.- Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary-
> (i) in the interest of investors, or orderly development of securities market; or
> (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions, -

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or
(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market."

The Board is a statutory body established under section 3 of the Act and section 11 thereof enjoins a duty on it to protect the interests of investors in securities and to promote the development of and to regulate the securities market. Parliament in its wisdom has left it to the Board to take such measures as it thinks necessary to carry out these duties. The powers of the Board in this regard are, indeed, very wide and it can do anything and take any action/step in order to perform its functions/duties. Howsoever wide the powers be, every action of the Board has to be judged on the twin tests of investor protection and development and regulation of the securities market. In other words, the Board may be free to do anything but whatever it does has to be for the protection of the interests of investors or for the development and regulation of the securities market. It has the freedom to play only within these parameters. Having left it to the Board to take such measures that are necessary for investor protection and regulation and development of the securities market, sections 11(2) and 11(4) without diluting the powers of the Board under section 11(1) suggest some of the measures which it can take in this regard. Clause (b) of section 11(4) clearly entitles the Board to restrain persons from accessing the securities market and prohibit any person associated with the market to buy, sell or deal in securities if that were to become necessary for investor protection or for preserving the integrity of the securities market. In other words, when the Board finds that any person associated with the securities market has committed some serious wrongs, he can surely be kept out of the market to prevent him from committing that wrong again and to preserve its integrity and this is one way of regulating the market. Again, section 11B entitles the Board to issue such directions to any of the intermediaries referred to in section 12 or to any person associated with the securities market as it may think appropriate either for protecting the interests of investors or for regulating the

securities market which would include preserving its integrity. This is the common thread that runs through the provisions of the Act including sections 11 and 11B. The directions that are issued under these provisions have necessarily to be preventive or regulatory in nature and these provisions cannot be resorted to for punishing the wrongdoers. There are other provisions in the Act and in the regulations framed thereunder for taking penal action against the delinquents. Some of the directions that the Board may issue under sections 11 and 11B of the Act could be to keep the delinquent out of the market as that may be necessary to preserve its integrity having regard to the nature of his wrongdoing. Such directions are also preventive and regulatory in nature though incidentally they may have the effect of keeping him out of his business. Even though he may be out of business, the directions cannot be said to be punitive because the primary purpose of the directions is to regulate the market by preserving its integrity and keeping the wrongdoer out is only incidental. The object is not to punish him. Such directions are usually issued in the larger interests of the securities market. In short, the Board as a watchdog of the securities market can take any action/step against any person associated with that market provided those actions are meant to protect the interests of investors and/or to regulate the securities market.

13. In the case before us, the appellants had transferred 80,800 shares belonging to 252 shareholders in a fraudulent manner discussed hereinabove in great detail. In view of this grave misconduct of the appellants, the managing director and the joint managing director of Parsoli who did the mischief have been directed to make a public offer through a merchant banker to acquire shares from the public shareholders by paying them the price determined by the valuer in the manner prescribed in regulation 23 of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (delisting regulations) and acquire the shares offered in response thereto. They have been directed to complete this process within three months. The consequential direction has also been issued that if as a result of the offer of shares by the public shareholders, the public shareholding of Parsoli comes below the minimum level required to be maintained, then it should be compulsorily delisted. The learned senior counsel has taken

serious objection to these directions being issued under sections 11 and 11B of the Act. He has strenuously argued that these directions are ultra vires the provisions of sections 11(4) and 11B of the Act and that they are neither preventive nor remedial. According to the learned senior counsel, these directions are punitive in nature which could not be issued. Another facet of this argument is that dehors the provisions of the delisting regulations, the Board has no powers to issue such directions. These arguments have no merit at all and deserve to be rejected at the threshold. It is true that the directions that can be issued under sections 11 and 11B of the Act have necessarily to be preventive or remedial in nature and we are clearly of the view that these directions are preventive. The appellants had defrauded their shareholders as discussed hereinabove. While the shareholders were enjoying the warmth of their investments by holding the shares in physical form, their shares had been fraudulently transferred by the directors/promoters of Parsoli by forging their signatures and also on the basis of forged/duplicate share certificates. Could there be a more serious fraud relating to the securities market? The possibility that the appellants would not cheat/defraud their shareholders in future cannot be ruled out having regard to their conduct in the past. Obviously, the Board was concerned about the shareholders and the question is how to protect them from fraudsters. It is with a view to protect the interest of the shareholders generally that the impugned directions have been issued. Let us not forget that section 11(1) of the Act enjoins a duty on the Board to protect the interests of the shareholders and it would have failed in performing that duty if it had not intervened. The nature of the directions is such which would give an exit route to the shareholders. The two directors have been told to make a public offer to the shareholders of Parsoli and purchase the shares of those who offer at a price determined in accordance with the delisting regulations. The shareholders are not bound to offer their shares. This direction, in our view, is reasonable in the circumstances of the case as it gives an option to the shareholders to leave the company if they so choose. The argument that the shareholders could sell the shares in the market and go out is no answer because another set of shareholders would step in whose interests would be equally in jeopardy. Moreover, they are not likely to get a fair price in the market. This is

the way the Board thought that the interests of the public shareholders could be protected. May be there could be another method as well to protect the shareholders but the one adopted by the Board by issuing the impugned directions cannot be said to be perverse or arbitrary so as to call for our interference. We cannot agree with the learned senior counsel for the appellants that this direction has no nexus with the alleged wrongdoing. The nexus is obvious which has been pointed out hereinabove. We are also of the view that the directions are preventive and remedial in nature and the Board was competent to issue the same. The learned senior counsel also pointed out during the course of the hearing that the financial burden on the second and third appellants would be to the tune of approx. Rs.30 crores. We do not know how this figure has been worked out but, be that as it may, the burden shall only be on the directors/promoters of Parsoli who have played the real mischief. One cannot cheat/defraud one's own shareholders and then claim that one is being burdened with a financial liability. If there is a financial liability, so be it as it is only incidental and the object is to protect the shareholders.

14. Before we conclude, we may take note of another argument advanced by the learned senior counsel for the appellants. He strenuously contended that the directions issued in paragraph 12(c) and (d) of the impugned order by which the second and the third appellants have been directed to provide an exit route to the shareholders are beyond the show cause notice and deserve to be set aside on this ground. He pointed out that the show cause notice does not state that such directions could also be issued and, therefore, the appellants have had no opportunity to represent against the issuance of such directions. We are unable to accept this contention. We have carefully gone through the show cause notice and find that the details of the misconduct committed by the appellants have been mentioned in paragraphs 3 to 23 thereof and the provisions of law which they violated have been clearly stated in paragraph 24. After pointing out the provisions that had been violated, the show cause notice goes on to state the proposed action in paragraph 25 which is reproduced hereunder for facility of reference:

> "25. In view of the above, you are hereby called upon to show cause as to why action in terms of Section 11(4) and Section 11B of SEBI Act, 1992 should not be initiated against you for the violations specified above,

> **which may include** debarring you from accessing the securities market and prohibiting you from buying, selling or otherwise dealing in securities for an appropriate period of time. This shall be without prejudice to the right of Securities and Exchange Board of India Act, 1992 to initiate prosecution under section 24 of SEBI Act, 1992 or any other action as it may deem fit in terms of the said Act or the Rules and regulations framed thereunder." (emphasis supplied)

The words "which may include" as mentioned in paragraph 25 leave no room for doubt that the proposed action of debarring the appellants from accessing the securities market was not exhaustive and that such other directions which the Board is competent to issue under these provisions could also be issued if the allegations enumerated in paragraphs 3 to 23 of the show cause notice were established. We have already observed that the Board is competent to issue such directions as may be necessary to protect the interests of the investors. It is pertinent to mention here that the directions of the kind that have been issued in para 12(c) and (d) of the impugned order are well known to those who are associated with the securities market and are often resorted to by the market regulator as and when it becomes necessary to protect the interests of investors. Directions of this kind are also the requirements of some of the regulations framed by the Board for the purpose of regulating the market. With a view to satisfy ourselves that no prejudice/injustice is caused to the appellants, we put it to the learned senior counsel for the appellants that if these directions had been specifically mentioned in the show cause notice then what further could they have urged before the Board. After seeking instructions from his clients who were present in Court, he could not point out anything in this regard. We are, therefore, satisfied that no prejudice or injustice has been caused to the appellants particularly in the background that such directions are well known to the market. Having regard to the conduct of the appellants which has been discussed in detail hereinabove and in view of the grave misconduct that has been established on the record, we are of the firm view that the directions of the kind contained in para 12(c) and (d) of the impugned order are called for in the circumstances of this case to protect the interests of the shareholders. Even if it were to be assumed (though we are holding to the contrary) that there was some lacuna in the show cause notice in this regard, we are upholding the directions in exercise of our powers under Rule 21 of the Securities

Appellate Tribunal (Procedure) Rules, 2000 to secure the ends of justice. It may be mentioned that Rule 21 of these rules enables this Tribunal to make such orders or give such directions as may be necessary or expedient, among others, to secure the ends of justice.

15. This brings us to the second argument of the learned senior counsel for the appellants as noticed in para 7 above. It is argued that since Parsoli had done no wrong as a stock broker or as a depository participant, the Board was not justified in stopping it from carrying on the activities as a stock broker or as a depository participant. The argument is that the wrongdoing, if any, of the first appellant was in its capacity as a listed company and not in its capacity as a stock broker or a depository participant and that it could not be stopped from carrying on its activities in these two capacities. Another facet of this argument is that the first appellant could be prevented from carrying on its activities as a market intermediary (stock broker or depository participant) only by way of a disciplinary action after following the procedure laid down in Securities and Exchange Board of India (Intermediaries) Regulations, 2009 (intermediary regulations) whereunder the certificates of registration can be suspended/cancelled or such other punishments could be awarded as prescribed therein. This argument(s) is equally untenable and we cannot accept the same. There is no doubt that the appellant was associated with the securities market in three different capacities namely, as a listed company, as a registered stock broker and a registered depository participant. The first appellant and its promoters committed serious wrongs in their capacity as a listed company and defrauded the shareholders. Should they be allowed to operate in the securities market in other capacities? We do not think so. We have already noticed that the appellants had played a fraud of the worst kind on their innocent shareholders and their conduct is so heinous that they should not be allowed to be in the securities market in any capacity. If the argument of the learned senior counsel were to be accepted then we should allow them to operate as stock brokers and depository participants. So far the appellants have defrauded only their own shareholders. The Board cannot take the risk of allowing them to operate as a stock broker or as a depository participant in which

capacity they could defraud other investors as well. Mr. Shyam Divan, Senior Advocate gave an illustration to prove his point that the first appellant could not be debarred from functioning as a stock broker or a depository participant. He said if a listed company which manufactures automobiles were to commit a similar wrong qua its shareholders, could the Board debar that company from manufacturing motor cars. In this illustration the answer has to be in the negative because the activity of manufacturing cars is not market related but if the listed company was carrying on any other activity or wearing any other hat as a market intermediary in the securities market, it could certainly be kept out therefrom depending upon the nature of the misconduct. If the wrong committed is heinous as in the present case, the object of the Act would be better achieved by keeping the wrongdoer out of the market completely no matter the number of hats he may wear. We may hasten to add that whether for a particular wrongdoing, the market player is to be kept out of the securities market completely or only in regard to a particular activity would depend upon the facts and circumstances of each case and also on the gravity of the wrongdoing. In the facts and circumstances of the present case, we have no doubt that the Board was justified in keeping the first appellant out of the market completely in regard to all its activities for a period of seven years because the wrongdoing is rather serious. It is for the same reason that we would uphold the other direction issued to the second and third appellants restraining them from holding the position of a director in any listed company for the same period. This direction, too, became necessary because these appellants were primarily responsible for defrauding their shareholders. We cannot lose sight of the fact that the securities market is a place where investors come to trade, that is, buy and sell their securities and it is of utmost importance that we keep the market place safe and secure. It is only then that the confidence of the investors, both from within and outside the country, can be built and investor confidence is an important factor which enables the market to develop. It is for this development that the Board has been set up.

16. We may now deal with the other two Appeals no. 112 and 113 of 2010 in this group both of which are directed against the common order dated May 5, 2010 passed by the adjudicating officer imposing monetary penalties on the appellants. Reference to this

order and the penalties has already been made in para 5 above. Penalty of Rs.25 lacs has been imposed on Parsoli, its managing director and joint managing director under section 15A(a) of the Act for violating section 11C and another sum of Rs. 3 crores imposed on the family of Sareshwalas who are the promoters of Parsoli including the managing director and the joint managing director under section 15HA of the Act for violating regulations 3 and 4 of the FUTP Regulations and for the violation of regulation 53A of the depository regulations. Penalties have also been levied on the family of Kothawala and several others who are the associates of Parsoli and their promoters and since they have not come up in appeal, it is not necessary for us to deal with those penalties. Parsoli has challenged the imposition of the penalties in Appeal no. 112 of 2010. Four promoters namely, Zafar Sareshwala, Uves Sareshwala, Talla Unus Sareshwala and Sleha Mohammed Yunus Sareshwala have challenged the penalties in Appeal no.113 of 2010. The learned senior counsel for the appellants while challenging the impugned order in these appeals strenuously contended that the penalties imposed on both the counts were highly excessive, arbitrary and unreasonable and that the adjudicating officer completely disregarded the factors enumerated in section 15J of the Act while imposing the penalties. We are unable to agree with the learned counsel.

17. We shall first deal with the penalty of Rs.25 lacs that has been imposed on Parsoli and its two directors as aforesaid. As already noticed, this penalty has been levied for violating section 11C(2) & (3) of the Act. These provisions read as under:

> "11C. Investigation.-
> (1)……..
>
> (2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.
>
> (3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or

> other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.
>
> (4) to (11) .....……..”

Section 15A(a) of the Act is also relevant and the same is reproduced hereunder for ease of reference.

> “15A. Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-
> (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
> (b) and (c)……”

The words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” were substituted by amending Act 59 of 2002 w.e.f. October 29, 2002 for the words “a penalty not exceeding one lakh and fifty thousand rupees for each such failure.” The statement of objects and reasons of Act 59 of 2002 states “**that existing penalties are too low and do not serve as effective deterrent**.” The fact that the information sought from the appellants during the course of the investigations was not furnished by them is not in dispute. As already noticed, the Board was investigating the fraudulent transfer and demat of shares of Parsoi on the basis of forged documents. We have on record that the Board had sought from Parsoli on July 11, 2008 information as to why the demat requests from its shareholders had been rejected when the company had admitted that such requests were genuine. Information was also sought as to why the shareholders were compensated. Parsoli did not furnish the information in this regard. This information was also sought from the managing director and he was directed to clarify the position. He, too, did not respond. Zafar Sareshwala, managing director was then summoned to appear before the investigating officer on August 5, 2008 which he did. As many as 25 questions were put to him with a view to solicit information regarding the manner in which the shares were being transferred and the modus operandi adopted by Parsoli in this regard. He was also asked as to why the

signature specimen cards had not been furnished to the RTA. His answer to as many as 15 questions was that he would furnish the information by August 8, 2008 which he never did. The other answers that he gave to some of the questions were evasive. We have perused the statement of the managing director and in the background of the findings that we have recorded hereinabove, we have no doubt that Parsoli and its directors were deliberately withholding the information that was sought from them during the course of the investigations. Obviously, they were trying to cover up their fraudulent acts. Non furnishing of the information to the investigating officer in these circumstances was indeed serious and such non furnishing would hinder the investigations. If market players start withholding information from the Board, the latter would not be in a position to perform its statutory duties enjoined upon it by the Act. Parliament had noticed that the penalties that were provided for the violations were inadequate and did not serve as a deterrent to the market players and it is for this reason that the Act came to be amended in the year 2002 as noticed above and the penalties were enhanced considerably. The penalty for not furnishing the information could be levied to the extent of Rs.1 lac for each day during the period for which the information was withheld. The appellants in the present case did not furnish the information at all. In these circumstances, a penalty of Rs.25 lacs cannot be said to be excessive.

18. A consolidated penalty of Rs.3 crores has been levied on the promoters of Parsoli for violating the FUTP Regulations and the depository regulations. We have already recorded our findings that the appellants had violated these provisions and played fraud on their shareholders which is of the worst order in the securities market. Section 15HA of the Act provides that if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty not exceeding 25 crores rupees or three times the amount of profits made out of such practices, whichever is higher. For the kind of fraud perpetrated by the appellants, we are of the view that the penalty of Rs.3 crores is too moderate and does not call for any interference by this Tribunal.

19. Another ground on which the penalties levied is sought to be challenged is that the adjudicating officer has not considered the factors enumerated in section 15J of the Act. Section 15 I of the Act provides that adjudication proceedings could be initiated for the purpose of adjudging, among others, under section 15HA whether any person has indulged in fraudulent and unfair trade practices relating to securities and the adjudicating officer while adjudging the quantum of penalty shall have due regard to the factors enumerated in section 15J of the Act which reads as under:

> "15J. Factors to be taken into account by the adjudicating officer.- While adjudicating the quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
>
> (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default'
> (b) the amount of loss caused to an investor or group of investors as a result of the default'
> (c) the repetitive nature of the default."

A plain reading of section 15J leaves no room for doubt that the factors enumerated therein are not exhaustive and that the adjudicating officer while having regard to those factors can take into account other factors as well such as the gravity of the wrongdoing. We are unable to agree with the learned senior counsel that the factors enumerated in section 15J have not been considered by the adjudicating officer. He has examined those factors and took note of large number of instances in which the shares belonging to the unsuspecting public shareholders were fraudulently transferred in favour of the promoters and their associates and concluded that the misconduct of the appellants was repetitive in nature. He has also observed that it would be difficult to assess and convert into monetary terms the gains made by the appellants in the fraudulent acts with any mathematical precision. He has also taken into account the gravity of the fraud and the modus operandi employed by the appellants and concluded that it calls for a deterrent penalty. We have perused the impugned order carefully and are in agreement with findings recorded therein and find no ground to interfere with the quantum of penalty imposed.

Group II

Appeals no.145 of 2010, 77 and 80 to 82 of 2011 fall in this group as they all arise from the same set of facts and allegations.

20. Parsoli is a listed company and governed by the listing agreement executed with stock exchange(s) where its securities are listed. Section 21 of the Securities Contracts (Regulation) Act, 1956 requires that a listed company shall comply with the conditions of the listing agreement. This agreement is in a standard form prescribed by the Board. It is an important document and one of the requirements of its clause 35 is that a listed company shall file with the stock exchange where its securities are listed a statement showing its shareholding pattern including that of its promoters and the changes made therein from time to time. One charge levelled against Parsoli is that it violated clause 35 of the listing agreement. The promoters of Parsoli transferred 9,61,600 shares held by them to others which brought about a change in the shareholding pattern of the promoters and Parsoli was aware of this change but it did not disclose the same to BSE. Another charge against Parsoli is the non-intimation to BSE of its decision to reverse the earlier decision recommending dividend. The board of directors of Parsoli in their meeting held on July 4, 2005 recommended to the general body of shareholders the declaration of dividend @ 10% per share and this information was disseminated to BSE promptly as required by the listing agreement and the regulations. This information without doubt is price sensitive. The board of directors in their subsequent meeting held on November 18, 2005 “revised the accounts by cancellation of dividend”. This cancellation of dividend was approved by the shareholders in the annual general meeting held on December 31, 2005 but information regarding cancellation of the dividend had not been communicated to BSE. Reversal of the earlier decision was equally price sensitive and Parsoli was required to communicate this information to the stock exchange for the benefit of the investors in general. The third charge against Parsoli is that during the course of investigations for the period from March 11, 2005 to July 18, 2005 Parsoli and its promoters/directors did not co-operate with the investigating officer and failed to furnish the information sought from them. Proceedings under sections 11 and 11B and

also under chapter VIA of the Act were initiated against Parsoli and its promoters/directors for the aforesaid wrongdoings and they have been found guilty both by the whole time member and the adjudicating officer. By order dated June 28, 2010, the whole time member has restrained Parsoli from accessing the securities market directly or indirectly for a period of one year from the date of the order. However, Parsoli has been allowed to service its existing clients both as a broker and also as a depository participant. The adjudicating officer by his separate orders passed against Parsoli and its promoters/directors has imposed different monetary penalties on them. Parsoli has filed Appeal no. 145 of 2010 against the directions issued by the whole time member and Appeal no. 82 of 2011 against the order of the adjudicating officer imposing monetary penalty. Appeals no. 77, 80 and 81 of 2011 have been filed by the promoters of Parsoli challenging the orders passed by the adjudicating officer imposing monetary penalties on them. As already observed, these appeals arise out of the same facts and the main arguments were addressed in Appeal no. 145 of 2010.

21. Challenging the findings recorded by the whole time member, the learned senior counsel argued that the promoters of Parsoli had pledged their shares with private financiers to raise funds for the company and that the pledgees wrongfully transferred the shares to themselves. We find no merit in this argument. There is no material on the record to show that the shares were ever pledged. The mere ipse dixit of the appellants cannot be accepted. It is pertinent to mention that there is a procedure prescribed under the Depositories Act and the regulations framed thereunder for pledging shares and when a pledge is created the same is recorded in the records of the depository. Had a pledge been created, as is now sought to be argued, the appellants would have produced the records from the depository. On the contrary, we find that the shares were transferred by the promoters and this information was duly received by Parsoli from the beneficial account statements received from the depositories. How can we agree with Parsoli that it was not aware about the transfer of shares? It is interesting to note that when the whole time member confronted Parsoli with the fact that there was no record of pledge in the records of the depository, Parsoli sought to change its stance and stated that the

promoters might have transferred their shares but pleaded ignorance about this fact. We find that Parsoli and its promoters have been dodging the Board at every stage of the proceedings and have not come out clean. The fact of the matter is that the shareholding pattern of Parsoli and its promoters had changed when they transferred a large chunk of 9,61,600 shares and this change in the shareholding pattern was never intimated to BSE. Parsoli and its promoters wanted to keep this information back from the market lest it had an adverse effect on the scrip. The object of clause 35 is to let the investors know about the shareholding of the promoters to enable them to take an informed decision. When the investors come to know that the promoters are themselves off-loading their shares, this information is bound to have its own effect. This lapse is rather serious and cannot be taken lightly. We are satisfied that Parsoli willfully violated clause 35 of the listing agreement when it failed to intimate BSE regarding the change in the shareholding pattern of its promoters.

22. We also find from the record that the board of directors of Parsoli had on July 4, 2005 recommended dividend to be declared @ 10% per share. This decision was promptly communicated to BSE as it was likely to have a positive impact on the price of the scrip. When the decision was reversed in the meeting held on November 18, 2005 which decision was subsequently adopted by the annual general meeting on December 31, 2005, Parsoli and its promoters deliberately withheld this information from BSE and thereby from the investing public and the reason why they withheld this information is not far to seek. The earlier decision to recommend dividend was in public domain and being price sensitive had the potential to influence the price of the scrip. When the decision was reversed, the information of reversal was likely to have an adverse impact in the market. Moreover, Parsoli and its directors wanted the investing public to remain under the impression that dividend was being declared even though the decision in that regard had been reversed. This is a novel method adopted by Parsoli and its directors in misleading the investing public and we are in agreement with the whole time member that they violated regulations 3 and 4 of the FUTP Regulations. The whole time member has also found that Parsoli and its directors did not furnish the details of the

record sought from them during the course of the investigations and that they did not co-operate with the investigating officer and made serious attempts to mislead the investigations and the proceedings. The whole time member has recorded his findings on all these issues in para 5.3 of the impugned order which findings were not seriously challenged by the learned senior counsel during the course of the hearing. What he strenuously argued was that the direction issued by the whole time member restraining Parsoli from accessing the capital market was not preventive in nature and that it was penal and the same could not be sustained. We are unable to agree with him. Firstly, Parsoli and its directors misled the investors in general on the issue of dividend as discussed above which is, indeed, a very serious wrongdoing with the potential of materially affecting the price of the scrip. Parsoli also took a false stand that the promoters had pledged their shares and that there was no change in their shareholding pattern. Here again, Parsoli was trying to cover up its default in not disseminating the information to BSE. As already noticed, Parsoli willfully withheld this information. Parsoil also misled the investigations and the proceedings. In the light of these wrongdoings as established in the impugned orders, we do not think that the order restraining Parsoli from accessing the capital market is penal. The purpose is to prevent Parsoli and its directors from repeating such serious wrongdoings in future. We have already observed that such a direction is regulatory and preventive in nature though it may incidentally have the effect of keeping the delinquent out of business.

23. As regards the orders passed by the adjudicating officer imposing monetary penalties, the learned senior counsel had only one argument to advance. He contended that the impugned orders did not take into account the factors enumerated in section 15J of the Act and the penalty amounts were excessive, arbitrary and disproportionate to the gravity of the wrongdoing. Here again, we cannot agree with the learned senior counsel. As already pointed out, the wrongdoing is so serious and we are of the considered view that the adjudicating officer has erred in imposing penalties on the lower side having regard to the amendments made in the year 2002. How can a listed company and its directors be allowed to mislead the investors in general by keeping them under the

impression that the company was coming out with a dividend when the proposal in this regard had been dropped? As already noticed, the appellants had willfully withheld this information from the stock exchange. Equally serious are the violations pertaining to the listing agreement and non-cooperation during the course of the investigations. We have no hesitation in upholding the impugned orders in all these appeals and also the monetary penalties imposed on Parsoli and its promoters/directors.

Group III

24. The solitary appeal that falls in this group is Appeal no.150 of 2010. The charge levelled against Parsoli in this appeal is non-compliance of the order dated February 20, 2009 by which the Board had directed it to remove the RTA and appoint another RTA within a period of six months from the date of the order. The whole time member, by his order of July 22, 2010, has held that Parsoli had failed to comply with the order and accordingly restrained it from accessing the securities market for a period of six months from the date of the order. This order is under challenge in this appeal. It is common case of the parties that the order dated February 20, 2009 had been complied with by Parsoli though there was a delay of 54 days in complying with the same. The whole time member is wrong in holding that there was non-compliance. The order had been complied with but belatedly. For the delay in complying with the order, Parsoli has furnished an explanation. It states that the RTA had not transferred the database and electronic connectivity for a sufficiently long time which caused the delay. It has also been pointed out that a tripartite agreement between Parsoli, the new RTA and the National Securities Depository Limited had to be executed before the change could take place and this agreement also took some time. The explanation furnished by Parsoli appears to be plausible and, in the circumstances, we are clearly of the view that the whole time member was not justified in issuing the directions under sections 11 and 11B of the Act restraining Parsoli from accessing the capital market. Even if Parsoli can be said to have violated the order of February 20, 2009 because of the delay in changing the RTA, the Board should have taken penal action for violating the said order by initiating adjudication proceedings or such other proceedings which could be initiated in

accordance with law. In the circumstances of this case, there is no warrant for issuing regulatory and preventive directions of the nature that have been issued in the instant case. We are of the view that the whole time member has resorted to this provision by way of taking disciplinary action which is not the scope of sections 11 and 11B of the Act. In this view of the matter, the impugned order cannot be sustained.

For the reasons recorded above, Appeals no. 112, 113, 145, 146 of 2010 and Appeals no. 77, 80, 81, 82 of 2011 are dismissed and the impugned orders therein upheld. Appeal no. 150 of 2010 is allowed and the impugned order therein set aside. Parties shall bear their own costs in all the appeals.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

ddg
12.8.2011

After we pronounced the orders in Court, the learned counsel for the appellants made an oral prayer that we should stay the operation of our orders to enable the appellants to continue operating in the market till such time they approach the Supreme Court. This prayer is opposed by the learned counsel appearing for the Board. The prayer made on behalf of the appellants, in our view, is wholly misconceived. By orders dated June 28, 2010 and July 27, 2010, the Board had restrained the appellants from accessing the securities market for a period of one year and seven years respectively and

these orders had been impugned in the appeals. When the appeals were admitted, we did not stay the operation of the orders impugned therein. Now when we have affirmed those orders and dismissed the appeals, there is no reason for us to grant any interim stay. Consequently, the prayer is rejected.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

Prepared and compared by-ddg
12.8.2011