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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : February 07, 2017*

\+ **CHAT.A.REF. 3/2011**

COUNCIL OF THE INSTT. OF CHARTERED ACCOUNTANTS OF INDIA ..... Petitioner

Represented by: Mr.Rakesh Aggarwal, Advocate with Mr.Pulkit Aggarwal, Advocate

versus

KAILASH CHANDER AGARWAL & ANR. ..... Respondents

Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J. (Oral)

1. A company by the name of Padmini Packaging Pvt. Ltd. changed its name to Padmini Polymers Pvt. Ltd. on December 23, 1992. It changed its name with effect from June 14, 2000 to Padmini Technologies Ltd.

2. When named Padmini Polymers Pvt. Ltd. the company invited applications on June 20, 1999 for allotment of 1,80,00,000 preferential shares for cash at par. These shares were listed for trading at Delhi Stock Exchange on December 23, 1999 and with the Bombay Stock Exchange on December 30, 1999 on the strength of three certificates issued by the respondent. The certificate dated June 30, 1999 certified that the company received ₹8,52,50,000/- as share money in respect of the preferential shares. The language of the certificate issued by the respondent reads, inter-alia, as

under:-

"……… On, the basis of our verification, we certify that the Company had already received ₹8,52,50,000/- Share money in respect of Preferential issue of 2,00,00,000 new Equity Shares of ₹10/- per share aggregating ₹20,00,00,000/-, as per details given below:

Number of shares	*Amount (₹)- per share*	*Total Amount ₹*
47,00,000	*10.00*	*4,70,00,000/-*
1,53,00,000	*2.50*	*3,82,50,000/-*

3. The second certificate of even date, being a due diligence certificate, issued by the respondent reads as under:-

"DUE DILIGENCE CERTIFICATE

Re: Padmini Polymers Limited

Preferential Allotment of 2,00,00,000/- Equity Shares of `10/- each aggregating to ₹20,00,00,000/-

i) We have examined various documents and materials facts/papers in connection with the Preferential Allotment.

ii) On the basis of such examination and discussion with the Company, its Directors and other Officers, Other Agencies, independent verification of the statements concerning the objects of the Preferential Allotment, Price justification and the contents of other Documents and papers furnished by the Company.

We confirm that:

(a) The Preferential Allotment of Shares is in conformity with the documents/materials and papers relevant to the Preferential Allotment.

(b) All legal requirements connected with said Allotment as also the guidelines and instructions etc. issued by SEBI, the Government and any other competent authority in this behalf have been duly complied with"

4. The third certificate dated November 13, 1999 issued by the respondent reads as under:-

"TO WHOMSOEVER IT MAY CONCERN

This is to certify the detail of receipt of Share Application Money aggrebgating to ₹8,52,50,000/- realised & credited to the account of M/s Padmini Polymers Limited is given as under:-

S.No.	*NAME OF ALLOTIES*	*CHQ NO.*	*CHQ. DT*	*DRAWN ON*	*AMOUNT*
1.	*Contessa Commercial Co Pvt. Ltd*	*175826*	*21.05.99*	*State Bank of Hyderabad*	*90,00,000.00*
2.	*Bhumenfeld Ltd*	*307471*	*17.05.88*	*State Bank of Bikaner and Jaipur*	*90,00,000.00*
3.	*Jiwansagar Promoters Pvt. Ltd*	*671542*	*07.06.99*	*State Bank of Hyderabad*	*22,50,000.00*
4.	*Bhagwandas Sagarmal*	*155361*	*28.06.99*	*State Bank of Hyderabad*	*22,50,000.00*
5.	*Cherry Marketing P. Ltd*	*43682*	*01.06.99*	*Vijaya Bank*	*22,50,000.00*
6.	*Alok Khelan*	*149653*	*25.05.99*	*HDFC Bank*	*22,50,000.00*
7.	*J.P. Promoters P. Ltd*	*780801*	*21.05.99*	*Canara Bank*	*90,00,000.00*
8.	*Herrnonite Surgicals P. Ltd*	*19870*	*03.06.99*	*Vijaya Bank*	*22,50,000.00*
9.	*Royal Bengal Exports P. Ltd*	*750970*	*03.05.99*	*The Fedral Bank Ltd.*	*22,50,000.00*
10.	*Prakash Kumar Damani (HUF)*	*612294*	*01.06.89*	*Vijaya Bank*	*22,50,000.00*
11.	*Carna Enterprises P. Ltd*	*43565*	*01.06.99*	*Vijaya Bank*	*22,50,000.00*
12.	*Raj Kumar Kishorepuria*	*931394*	*01.06.99*	*State Bank of Hyderabad*	*22,50,000.00*
13.	*Zinga Chemicals Pvt. Ltd*	*22965*	*02.06.99*	*Vijaya Bank*	*22,50,000.00*
14.	*Hennonite Consultants P Ltd.*	*42454*	*02.06.99*	*Vijaya Bank*	*22,50,000.00*
15.	*Savara Tic-up Pvt. Ltd*	*739153*	*03.06.99*	*The Federal Bank Ltd.*	*22,50,000.00*

16.	*HT Ferro P Ltd.*	*596160*	*03.06.99*	*Bank of Baroda*	*22,50,000.00*
17.	*Pramod Kumar Kishorepuna*	*915595*	*25.05.9*	*State Bank of …..*	*22,50,000.00*
18.	*Prakash Kumar Damani*	*92047*	*01.05.99*	*Vijaya Bank*	*22,50,000.00*
19.	*VB IMpex P. Ltd.*	*651401*	*21.05.99*	*Vijaya Bank*	*22,50,000.00*
20.	*S. Benwal*	*413113*	*28.05.99*	*Union Bank of ……*	*22,50,000.00*
21.	*Unit Trust of India*	*445867*	*25.05.99*	*UTI Bank Ltd.*	*2000,00,000.00*
	Total				***8,62,60,000.00***

5. Being relevant for the purposes of the fate of the respondent, we need to highlight that in the third certificate the respondent mentioned the name of the allottee, the cheque number issued by the allottee, the date of the cheque, the bank on which the cheque was drawn. The date of encashment of the cheque has consciously not being recorded in the certificate. We shall deal with this aspect while reasoning.

6. It came to the notice of the SEBI that the share price of the company unduly increased from December 13, 1999 to March 09, 2000. From ₹60.95 it rose to ₹266/-. Thereafter the price of the shares declined and by May 15, 2000 it fell to ₹47/-. Subsequently the price increased to ₹118.10 on July 06, 2000 and fell to ₹55.65 on August 08, 2000.

7. In view of the unusual price movement, SEBI conducted an investigation in which it was revealed that 2,00,00,000/- equity shares for cash at par were allotted as under:-

Sl. No.	*Allotment Date*	*Name of Allottees*	*Shares Allotted*	*Paid up value (₹/share)*
1.	*31.5.1998*	*Unit Trust of India*	*2000000*	*10*
2.	*20.5.1999*	*Contessa Commercial Co. P Ltd.*	*900000*	*2.5*

3.	*-do-*	*Billumenfeld Ltd.*	*900000*	*10*
4.	*-do-*	*Jiwansagar Promoters Pvt. Ltd*	*900000*	*2.5*
5.	*-do-*	*Bhagwandas Sagarmal*	*900000*	*2.5*
6.	*-do-*	*Raj Kumar Kishorepuria*	*900000*	*2.5*
7.	*-do-*	*Pramod Kumar Kishorepuria*	*900000*	*2.5*
8.	*-do-*	*Alok Khetan*	*900000*	*2.5*
9.	*-do-*	*Savera Tie-up P Ltd*	*900000*	*2.5*
10.	*-do-*	*Royal Bengal Exports Pvt. Ltd*	*900000*	*2.5*
11.	*-do-*	*S. Benwal*	*900000*	*2.5*
12.	*-do-*	*Prakash Kumar Damani (HUF)*	*900000*	*2.5*
13.	*-do-*	*Prakash Kumar Damani*	*900000*	*2.5*
14.	*-do-*	*Carna Enterprises P Ltd*	*900000*	*2.5*
15.	*-do-*	*Zinga Chemicals P. Ltd*	*900000*	*2.5*
16.	*-do-*	*Hemmonite Consultant P Ltd*	*900000*	*2.5*
17.	*-do-*	*Cherry Marketing P Ltd.*	*900000*	*2.5*
18.	*-do-*	*HT Ferro P Ltd*	*900000*	*2.5*
19.	*-do-*	*Hermonite Surgicals P Ltd*	*900000*	*2.5*
20.	*-do-*	*V B Impex P Ltd.*	*900000*	*10*
21.	*-do-*	*J P Promoters P Ltd.*	*900000*	*10*
			2,00,00,000	

8. Entities 2 to 13 in the above tabular statement were Kolkata based and entities 14 to 21 were Delhi based. For purposes of further investigation SEBI recorded the entities as Kolkata based entities and Delhi based entities.

9. It was noted by SEBI that the company had allotted 1,80,00,000 shares to these entities (other than UTI to which 20 lac shares were allotted on May 31, 1999). To the other allottees the shares were allotted for cash at par on June 20, 1999. The preferential shares were not subject to lock-in.

10. With reference to the bank statement of account maintained by the company SEBI detected, qua Kolkata based entities, as under:-

a) *Kolkata Based entities*

Name of Allottees	*No. Shares Allotted (on 20.6.99)*	*Amount due to Padmini (₹)*	*Cheque Date*	*Clg. Date*	*Entities to whom shares sold by respective allottees*	*Date of sale bills*	*Date of receipt of payment (D.D.) by allottees*
Contessa Commercial	*9,00,000*	*90 lacs*	*21.5.99*	*5.1.00*	*All Seasons Hotels*	*28.7.99*	*29.12.99*
Bllumenfeld	*9,00,000*	*90 lacs*	*17.5.99*	*6.1.00*	*All Seasons Hotels*	*28.7.99*	*5.1.00*
Jeevan Sagar	*9,00,000*	*22.50 lacs*	*7.6.99*	*19.1.00*	*RN Dyachem*	*25.8.99*	*7.1.00*
Bhagwan Das Sagarmal	*9,00,000*	*22.50 lacs*	*28.5.99*	*14.1.00*	*Shivesh Computers*	*25.7.99*	*12.1.00*
Raj Kumar Kishorepuria	*9,00,000*	*22.50 lacs*	*1.6.99*	*14.1.00*	*Cross Country Exports*	*15.7.99*	*6.1.00*
Pramod Kumar Kishorepuria	*9,00,000*	*22.50 lacs*	*22.5.99*	*18.1.00*	*Cross Country Exports*	*15.9.00*	*7.1.00*
Alok Khetan	*9,00,000*	*22.50 lacs*	*28.5.99*	*19.1.00*	*Shivesh Computers*	*15.7.99*	*12.1.00*
Royal Bengal Exports	*9,00,000*	*22.50 lacs*	*3.8.99*	*18.1.00*	*DKG Buildocn*	*25.6.99*	*12.1.00*
Savera Tie-up	*9,00,000*	*22.50 lacs*	*3.8.99*	*18.3.00*	*JP Promoters*	*25.6.99*	*9.3.00*
Sanjeev Beriwal	*9,00,000*	*22.50 lacs*	*28.5.99*	*18.1.00*	*RN Dyachem*	*25.8.99*	*17.1.00*
Prakash Kumar Damani	*9,00,000*	*22.50 lacs*	*25.6.99*	*14.3.00*	*Mudra Capital*	*25.8.99*	*9.3.00*
Prakash Kumar Damani (HUF)	*9,00,000*	*22.50 lacs*	*25.6.99*	*14.3.00*	*Mudra Capital*	*25.8.99*	*9.3.00*

11. SEBI also noted that the cheque issued by Blumenfeld Ltd. dated May 17, 1999 was revalidated on January 04, 2000.

12. Qua Delhi based entities similar exercise revealed to SEBI as under:-

b) *Delhi Based entities:*

Name of Allottees	*Shares Allotted on 20.6.99*	*Amount due to Padmini (₹)*	*Cheque Date*	*Clearing Date*	*Entities to whom preferential shares were sold by the respective allottees*	*Shares Sold (at ₹.20/- each)*	*Date of sale*	*Date of receipt of sales consideration (DD date)*
Cherry Marketing P Ltd	*9,00,000*	*22.50 lacs*	*1.8.99*	*27.12.99*	*Panther Fincap*	*9,00,000*	*12.10.99*	*28.12.99*
Hermonite Surgicals P Ltd	*9,00,000*	*22.50 lacs*	*3.8.99*	*27.12.99*	*Miscellaneous entities*			
Zinga Chemicals P Ltd	*9,00,000*	*22.50 lacs*	*2.8.99*	*27.12.99*	*Triumph Internation*	*3,00,000*	*18.2.00*	*8.3.00*
Hermonite Consultants	*9,00,000*	*22.50 lacs*	*2.8.99*	*27.12.99*	*Panther Fincap*	*7,00,000*	*12.10.99*	*24.12.99*

P Ltd								
HT Ferro P Ltd	*9,00,000*	*22.50 lacs*	*3.8.99*	*28.12.99*	*Triumph International*	*3,00,000*	*18.2.00*	*7.3.00*
Cama Enterprises P Ltd	*9,00,000*	*22.50 lacs*	*1.8.99*	*27.12.99*	*Panther Fincap*	*9,00,000*	*12.10.99*	*24.12.99*
M/s VB Implex P Ltd.	*9,00,000*	*90 lacs*	*21.5.99*	*11.10.99*	*Classic Credits Ltd*	*9,00,000*	*12.10.99*	*24.12.99*
M/s JP Promoters P ltd	*9,00,000*	*90 lacs*	*21.5.99*	*7.3.00*	*Classic Credits Ltd*	*9,00,000*	*12.10.99*	*24.12.99*

13. The date of encashment of the cheques were noted to be after the shares were listed on the Delhi Stock Exchange and some after the shares were listed on the Bombay Stock Exchange.

14. The respondent obviously had to explain the three certificates issued by him to the company on the strength of which the company started trading its shares on the two stock exchanges.

15. The respondent took an obstructive attitude in the proceedings before SEBI recorded in the order dated November 01, 2007 passed by SEBI.

16. He took the stand that he issued the certificate on the basis of the computerized record maintained by the company but failed to render any explanation as to why did he not cross-check the same with the statement of account issued by the bank to the company.

17. In para 4.8 and 4.9 of the order passed by SEBI, it is noted as under:-

> *"4.8 Further, on a perusal of Annexure-I of the show cause notice (mentioned in para 1.7 above), I note that the cheques issued by the allottees (except Unit Trust of India), got cleared only after they said their shares in off market transactions and in many cases after the receipt of the sale consideration. To cite few examples, cheque dated May 21,1999 issued by Contessa Commercial (one of the preferential allottees) for ₹90 Lacs was in fact cleared only on January 05, 2000 after the receipt of sale proceeds of the said shares by the original allottees. Similarly, cheque dated August 01, 1999 issued by Cherry Marketing P. Ltd. ₹22.50 lacs was in fact cleared only on*

December 27,1999. Similarly, I find that there are numerous instances as detailed in Annexure I to the show cause notice which established beyond doubt that Padmini had not received share application money by June 30, 1999 or by November 30, 1999, as stated and certified by Shri Kailash Chandra Agrawal in his certificates dated June 30, 1999 and November 30,1999.

4.9 I note from the bank statements of Padmini (maintained with Vijaya Bank Ansari Road Branch, New Delhi) that the cheques (towards the application/allotment money) of Cama Enterprises (cheques no. 43565) Hermonite Consultants Pvt Ltd (cheques no. 42454), Zinga Chemicals Pvt Ltd. (22985), Cherry Marketing Pvt Ltd. (Cheques no. 43226) Hermonite Surgicals Pvt. Ltd (cheques no. 19878) and HT Ferro Pvt. Ltd. (cheques no. 596160) were cleared and credited to the account of Padmini only on December 27,1999 except the cheques of H T Ferro Pvt. Ltd. which was credited on December4 28,1999. Similarly, from the bank statement ofr Padmini maintained with the State Bank of Hyderabad. Kolkata it is observed that the payments from the Kolkata based entities were received in the month of January 2000. Therefore, the certificate of Shri Kailash Chandra Agrawal that the aforesaid cheques were realized and credited into the account of Padmini before November 30,1999 is not only false but also misleading. I observe that Shri Kailash Chandra Agrawal was in collusion with Padmini and its directors in defrauding the investors. He had also stated before the investigating officer that he had relled upon the certificate given by Padmini dated June 30,1999. Had he verified the bank statements of Padmini, he would have found out that the said certificate issued by Padmini was false, sice bulk of the credits came into the accounyt long after 30th June 1999. Namely in December 1999."

18. In para 4.10 of its order SEBI has noted that the respondent was confronted with the bank statement of account issued by the banker of the company. Indeed respondent had no answer.

19. Interestingly the order passed by SEBI brings out that in his stand before SEBI the respondent had inter-alia taken an alternative defence of relying on return of allotment in Form 2 submitted by the company to the Registrar of Companies. The said form was signed by the Company Secretary of the Company on December 01, 1999. Rightly it has been held by SEBI that the respondent could not have acted on the strength of the form because the dates on which he issued the certificates preceded the date of Form No.2.

20. Proceeding to take cognizance of a report submitted by SEBI the Council of the Institute of Chartered Accountants constituted a Disciplinary Committee, forming a prima-facie opinion that the respondent was guilty of professional misconduct. Proceedings were initiated by the Disciplinary Committee. The respondent was served. His reply was taken on record. He was heard on various dates. The report of the Committee dated November 02, 2009 is a reflection of the order passed by SEBI. In the interregnum CBI had stepped in. Record of the company had been seized by CBI.

21. We have gone through the report of the Disciplinary Committee and we do not pen-profile the same for the reason the stand taken by the respondent before SEBI is the stand taken before the Disciplinary Committee. The order passed by SEBI has not been challenged by the respondent.

22. Unfortunately we do not have any assistance from the respondent who has chosen not to appear today and would therefore highlight that in the certificate dated November 13, 1999 the respondent has consciously omitted to add the column of the date when the cheques were encashed for the reason he knew that no cheque had been encashed by the date he gave the

certificate. We would also highlight that before the Disciplinary Committee that the respondent relied upon Form 2 which had been submitted by the Company to the Registrar of Companies, and suffice it to record that said form could not form the basis on which the respondent issued the certificates because the date of issue of said form under signatures of the Company Secretary of the Company, is much after the date when the three certificates were issued by the respondent.

23. Accepting the report of the Disciplinary Committee, the Council at its meeting recommended penalty of removal of the name of the respondent from the Register of Members of the Institute for a period of five years.

24. We concur.

25. The reference is disposed of levying penalty of removal of the name of the respondent from the Register of Members of the Institute of Chartered Accountants for a period of five years.

26. No cost.

(PRADEEP NANDRAJOG)
JUDGE

(YOGESH KHANNA)
JUDGE

FEBRUARY 07, 2017
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