BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ESPL/AO/DRK/AS/EAD-3/231/09 -134/2010]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against :

Enam Securities Pvt. Ltd.
(formerly Enam Financial Consultants Pvt. Ltd.)
SEBI Registration No.- MB/INM000006856

FACTS IN BRIEF

1. Securities and Exchange Board of India conducted inspection of books, records and other documents of Enam Financial Consultants Pvt. Ltd. (currently Enam Securities Pvt. Ltd.) a SEBI Registered Merchant Banker hereinafter referred to as "the noticee"/ ESPL/Merchant Banker (MB) /Lead Manager (LM) /Book Running Lead Manager (BRLM),. The inspection was carried out from August 16, 2005 to August 30, 2005. The inspection was mainly focused to examine the role of the noticee as a Merchant Banker. The inspection team also gathered information on the due diligence process followed by the noticee in the process of public issues by companies and made observations thereon. The inspection report was forwarded to the noticee vide letter dated June 28, 2006 for the comments of the noticee and the noticee replied vide its letter dated July 12, 2008.

APPOINTMENT OF ADJUDICATING OFFICER

2. Subsequent to transfer of previous Adjudicating Officer, I was appointed as the Adjudicating Officer vide order dated December 10, 2008 under section 15 I of the Securities and Exchange Board of India Act, 1992 (**SEBI Act, 1992**) read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge under Section 15HB of the SEBI Act, 1992, the violations of the provisions of Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 and clauses 5.1, 5.1.1, 5.1.2, 5.3.3, 7.3, 7.4.1, 7.7.7, 11.2 (xxiii),

11.3.6 (ii), 16.2.2.2 of SEBI (Disclosure & Investor Protection) Guidelines, 2000 **[SEBI (DIP) Guidelines, 2000**] issued under SEBI Act, 1992 alleged to have been committed by the noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A Show Cause Notice dated June 14, 2007 was issued to the noticee in terms of the provisions of Rule 4 of the Rules, requiring it to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under Section 15HB of the SEBI Act, 1992 for violation of the provisions of Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 and clauses 5.1, 5.1.1, 5.1.2, 5.3.3, 7.3, 7.4.1, 7.7.7, 11.2 (xxiii), 11.3.6 (ii), 16.2.2.2 of SEBI (DIP) Guidelines, 2000 issued under SEBI Act, 1992. A copy of the inspection report was enclosed with the SCN.

4. It was alleged in the SCN on the basis of the findings of the inspection report that-

   (i) The noticee had failed to exercise due diligence with reference to certain disclosures made in the offer documents. For example, the noticee had failed to make disclosures in respect of the entity Rabobank International Holding B.V. (hereinafter referred to as Rabobank) and certain other entities as promoters in the public issue of Yes Bank Ltd./the Bank/ the Company.

   (ii) The noticee had failed to exercise due diligence and did not make adequate disclosures while providing bidding facilities through alternate modes. An analysis of the number of e-mails as compared to the number of bids revealed that, for approximately 26 percent of initial bids, no e-mails were on record, which suggests that the noticee has not laid down procedure and policy for accepting the bids from QIB category. Other instances relating to the alleged failure in this regard were detailed in the inspection report annexed with the SCN.

   (iii) The noticee had failed to exercise due diligence with reference to disclosures pertaining to the allocation of shares to QIBs etc, for instance no Indian Financial Institution or Banks are considered eligible in 'Platinum Category' and preferential treatment was given to few entities. It was alleged that FII such as Goldman Sachs, BSMA, UBS etc. have been given preferential treatment in allotment of shares. It is further alleged that there is no consistency in allotment of shares within the same category. In this regard it was also alleged that the noticee had failed to fulfill its obligations as a merchant banker in a professional and diligent manner.

(iv) The noticee had failed in the assigned duties as post-issue lead manager to the public issues to redress investor grievances within stipulated period laid down in Rule 9 (c) of SEBI (Merchant Bankers) Rules, 1992. For example, it was noted in IPO of Bharti Shipyard Limited, that out of the total 859 complaints pertaining to the issue, even 8 months after the date of allotment, 35 investor complaints were still shown as pending.

(v) The noticee had failed to exercise due diligence in properly monitoring the flow of applications and other matters pursuant to closure of the public issues. For example, in the Yes Bank IPO shares were allotted to applicants having non existing DP IDs and other irregularities. Registrar to an issue failed to detect the same and the noticee as post issue LM failed to notice and report the same to the Board thereby alleged to have violated the provisions of Guideline 7.4.1 of SEBI (Disclosure & Investor protection) Guidelines, 2000.

5. The SCN stated that the reply shall reach within 15 days from date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record. The aforesaid show cause notice was served on the noticee through Registered Post Acknowledgment Due. The noticee vide its letter dated June 25, 2007 sought additional 15 days time for submission of the reply to the SCN. The noticee submitted its reply vide its letters dated July 09, 2007, March 19,2009 and February 05, 2010.

6. The summary of its submissions are-

(i) Disclosures of Rabobank as "Promoter"

a. Verbatim disclosure of the RBI letter dated March 30, 2001 was disclosed in the DRHP and RHP, page 75 of RHP.
b. We were guided by the explanation 1 of Clause 6.8.3.2(m) of SEBI (DIP) Guidelines, 2000 in this regard. As per the said explanation; the term Promoter for the purpose of SEBI (DIP) Guidelines, 2000 shall include:
    i. The person or persons who are in overall control of the company
    ii. The person or persons who are instrumental in the formulation of a plan or programme pursuant to which the securities are offered to the public
    iii. The person or persons named in the prospectus as promoters(s)

    In the instant case, Rabobank was neither in control of Yes Bank Ltd. as evidenced by their Board representation nor were they instrumental in the formulation of a plan or programme pursuant to which the IPO was made.

Accordingly, Rabobank was not named as the promoter in the Red Herring Prospectus and Prospectus of Yes Bank Ltd.

c. Rabobank is not a promoter, in support of the same the noticee had produced the following documents-

- Auditors report on Financial Statement as appearing in RHP has classified Rabobank as Financial investor in Significant Accounting Policies.
- Letter from Rabobank to RBI stating their role as that of a "technical partner".
- Composition of Board where Rabobank had nominee of 2 directors in the Board strength of 12 Directors.
- No Objection letter from RBI for Rabobank to participate in the IPO process and secondary market. Reserve Bank of India (RBI), in its letter dated May 24, 2004 specified that Yes Bank Ltd. was required to obtain RBI's prior approval regarding its capital structure. Accordingly, prior to filing the Draft Red Herring Prospectus (DRHP) with SEBI, Yes Bank Ltd. sought RBI's approval for its IPO vide its letters dated November 27, 2004, December 7, 2004 and December 13, 2004. In the aforesaid letter dated December 13, 2004; post IPO shareholding of Yes Bank Ltd. was reported to RBI clearly showing that post Issue promoter holding of Yes Bank Ltd. (i.e. combined holding of Ashok Kapur, Rana Kapoor, Mags Finvest Private Limited, Morgan Credits Private Limited and Doit Capital (India) Private Limited) would be 38.52% and post issue holding of Rabobank in Yes Bank Ltd. would be 14.81%. RBI, in its letter dated January 25, 2005; took concurrence of the aforesaid letter and given go ahead to the IPO of Yes Bank Ltd. subject to compliance with necessary SEBI requirement. Since, RBI has allowed Yes Bank Ltd. to go ahead with their IPO after taking a note of the post IPO shareholding, we believe that the post IPO shareholding of Yes Bank Ltd. is in compliance with the conditions stipulated by RBI vide its letter dated May 24, 2004.

d. Rabobank was mentioned as co-promoter in the application made to RBI and nowhere Rabobank was called as "foreign Promoters" as alleged. It is important to understand the context in which Rabobank was called as "Co-Promoters" for the purpose of License. The intention of Rabobank to participate with the Indian Promoters as "technical partner" has been brought out in the initial application made by the Indian Promoters and as well as Rabobank Managing Board letter to the Governor, Reserve Bank of India.

e. "Promoter" is not a term which is understood uniformly and each of the usage is coupled with the underlying purpose for which the term is used. The person defined under a connotation of a promoter or co-promoter by a financial institution or RBI or Government etc may not necessarily be called a promoter

going by other defined connotations such as by SEBI Guidelines. Until the recent unification exercise, even within the SEBI Guidelines, the term “Promoters” had a different connotation for the purpose of Continuous Listing Requirements and DIP Guidelines within the SEBI Guidelines.

f. The term “Promoters” “Promoters Group Companies” etc for the purpose of disclosures in the offer document are SEBI defined terms. Disclosures were made and accepted in accordance with the same.

g. The relationship of Rabobank to Yes Bank Ltd. was deliberated extensively-internally as well as with the Issuer. Rabobank relationship is completely disclosed in the offer document and there has been no intention to mis-lead the investors.

h. There are various correspondences on the subject matter between the Bank, RBI and SEBI during and prior to issue process which has not been taken cognegence by the Inspection team. Perusal of these letters, in our view, would have given the fuller picture to the inspecting team.

i. Bank after listing is required to make continuous disclosure in terms of regulation 7 and 8 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations. Rabobank has not been shown as promoters in any of the filings. Conduct of Rabobank from time we started off the process till date reflects that they are not promoters of the Company.

j. The Draft offer document of Yes Bank Ltd. also went through the same level of scrutiny by the Exchange and SEBI as it does in respect of all other issues. No point of time SEBI operating team raised any questions on the matter itself establishes the fact that there has been no violation of the Guidelines.

k. In terms of SEBI Guidelines, DRHP, RHP is required to be signed by all Directors of the company confirming the disclosures. The disclosures in the prospectus have been approved by all the Directors of the Bank including representatives from Rabobank. The responsibility to ensure the content reflects actual position is that of the Issuer Company which has been fulfilled by the Board of Directors by approving the disclosures made therein.

l. Primary responsibility of disclosures rest with that of the Issuer Company only. As a Merchant Banker, it is our fiduciary responsibility to ensure that the disclosures are factual and represents underlying reality to enable the investors to make an informed decision. Had we disclosed Robobank as Promoters, it would have been misrepresentation of the facts and factually incorrect.

(ii) Email not on record: 26% of initial bids, no emails were on record-

a. We had mentioned that neither the notice nor the inspection report provides any details of the 26% of the initial bids for which no corresponding emails were found.
b. All bids in respect of which emails were purportedly missing were examined pursuant to inspection. In every single bid, the bid form was indeed received through email or fax or physically from the relevant custodian in every single case. Therefore, no allegation under this head of any nature is maintainable, leave alone that could result in imposition of penalty.

(iii) Discretion and Arbitrary Allotment (failed to fulfill obligation in professional and diligent manner)

a. Discretion was permitted as per DIP guidelines and part of terms of offer and therefore done within legal farmeowork.
b. No malafide in exercise of discretion. Neither BRLM nor its associates were direct beneficiaries of the exercise of discretion.
c. No where law requires us to be consistent while exercising discretion. Clause 11.3.5 (a) states certain parameters for allotment to QIB by BRLM. This parameters can change from issue to issue and hence uniformity in treatment of investors in respect of all issues cannot be same.
d. The final responsibility for allotment rests with the issuer.

(iv) Failure to redress grievance within stipulated period-

a. The fact that out of 859 complaints, 824 has been successfully redressed within one month itself reflects our seriousness in this area and our responsibility towards our investors.
b. These complaints have been resolved as evident from registrar's enclosed certificate dated September 30, 2005 on the day of conclusion of inspection itself confirms that there are no complaints which are outstanding for more than 30 days.
c. The balance 35 complaints could not be addressed on account of certain legal/other constraints like incomplete information etc. not on account of lack of efforts from our side.
d. We sent you letters received from Registrar confirming that quarter ending June-05, Dec-05, March-06 there were no outstanding complaints. Since the inspection was done in August 2005 based on the certificate from registrar itself, it can be easily made out that the statement in the report is not based on actual facts.

e. The observation appears to be based on wrong data and neither the inspection report nor the notice gives details of 35 complaints which are pending.

(v) <u>Violation of clause 7.4.1 of SEBI (Disclosure & Investor Protection) Guidelines, 2000</u>

a. Post issue Merchant Banker is expected to work in tandem with intermediary, however not responsible for performing the act of the intermediary, registrar in this case.
b. No point of time Registrar brought these facts to our attention or we had reasonable suspicion of such omission or commission.
c. Clause 5.4.3.4 of SEBI DIP Guidelines states that Registrar is primarily and solely responsible for issue management.
d. It must be noted that the Registrar is an independent service provider and has no legal relationship with the Merchant Banker. Apart from the overall monitoring of a registrar functioning, it is for the registrar to bring to the BRLM's notice any irregularities or queries.
e. Merchant Banker is bound to report to SEBI, if any act of omission or commission on the part of any of the intermediaries is noticed during the such visits. Merchant banker need to establish with certainty such omission or commission observed. We have taken all steps required to fulfill our obligation.

7. A Hearing notice dated 14.01.2009 was served on the noticee for hearing scheduled on 19. 02. 2009. The noticee had vide its letter dated February 09, 2009 sought inspection of documents and adjournment of the scheduled hearing. As requested, the noticee was granted an opportunity of inspection and a fresh date of hearing on February 27, 2009 vide letter dated February 11, 2009. As scheduled, the hearing was conducted on February 27, 2009. The noticee vide its letter dated February 25, 2009 authorized Dr. S. Subramanian (Head- Investment Banking, ESPL), Mr. Anay Khare (Head- Product Delivery, ESPL) and Mr. M. Natarajan (Compliance Officer, ESPL) to attend the hearing on its behalf. The Authorised Representatives (ARs) attended the hearing and made the following submissions-

i) ARs submitted that after conducting all the necessary due diligence it had come to the conclusion that Rabobank could not be demarcated as 'promoter' in the IPO of YesBank. The ARs submitted the following documents in support of their contention:

i. No objection of RBI for the participation of Rabobank, a **co-promoter**, in the IPO of Yes Bank and also subsequent market purchases by Rabobank to increase its holding to 20%. This permission could never have been given if Rabobank was a promoter of Yes Bank.

ii. Annual account of Yes Bank for the year 2005- where Rabobank has been called '**financial investor**'.

iii. Post- IPO compliance filings/ disclosures by Yes Bank which classifies Rabobank as a **public investor**.

ii) The noticee has submitted certificate form the RTA for the quarters ended June 30, 2005, December 31, 2005 and March 31, 2006 certifying that no investor complaints have been pending for more than 30 days. The noticee undertook to submit its reply regarding the specific complaints after it conducts the inspection of documents from MIRSD, as sought by it.

iii) The noticee undertook to submit confirmations regarding the completion of all supporting documentation in case of the bid applications in Yes Bank IPO mentioned in para 6[1] and 7[2] of the proceedings of meeting relating to allotment dated July 2, 2005 as submitted by the noticee as Annexure to its reply.

iv) The noticee was advised to submit whether any complaints have been received from SEBI/Banks/FIs regarding the discretionary allotment to QIBs and the replies given by the entity.

v) The noticee was also advised to substantiate the submission that the charges leveled in the notice were extraneous to the finding of the inspection report.

[1] Para 6 of Proceedings of The Meeting held at Mumbai on 2nd July, 2005 between the Issuer Yes Bank Ltd, BRLM, the noticee and the Registrar to the Issue- *In terms of the Prospectus, limited companies/corporate bodies are required to submit certified copies of i) Memorandum and Article of Association ii) Board Resolution and iii) Power of Attorney along with the bid-cum-application form. There were 235 applications for 110921250 shares whee the above documents were not avalible with the applications. It has been decided to accept these applications as valid for processing and the Registrars to the issue have been advised to collect the same in due course.*

[2] Para 7 of Proceedings of The Meeting held at Mumbai on 2nd July, 2005 between the Issuer Yes Bank Ltd, BRLM, the noticee and the Registrar to the Issue- *There were 812 applications for 171982900 shares where proof of PAN was not available with applications. these consist of 805 applications from Non- Institutional category for 171976300 equity shares. Remaining are applications under the retails individual investor category where bids have been made for 6600 shares. As the requirement to verify the PAN details is of a recent origin, it has been decided to accept these applications as valid for processing and the Registrars to the issue have been advised to collect the same in due course.*

vi) The ARs undertook to submit documents in support of its contentions within a period of three weeks.

8. The noticee had made its further submissions vide letter dated March 19, 2009 and the summary of submission is mentioned in para 6 of Page no.3. Vide the said letter, the noticee submitted the complaints received from UTI Mutual Fund, dated 15/12/2003 & 09/01/2004 and complaints received from SBI Mutual Fund dated 12/03/2004. As regards the undertaking to submit confirmations regarding the completion of all supporting documentation in case of the bid applications in YES Bank IPO as mentioned in para 7 (iii) of page 8, the noticee submitted that it is yet to receive full details of current status from the Registrar and it is actively following up.

9. Thereafter the noticee had vide its letter dated March 23, 2009, stated that since the earlier personal hearing took place before the inspection of documents, therefore it requires one more opportunity of personal hearing to explain the case. As requested, another opportunity of personal hearing was granted to the noticee on April 15, 2009 vide letter dated March 26, 2009. However, the noticee had vide its letter dated April 09, 2009 intimated that it wish not to proceed on the hearing further and decided to go for consent. The noticee filed a consent application dated May 06, 2009.

10. Subsequently, the noticee vide its letter dated February 05, 2010 had intimated that it had decided to withdraw its consent application and to proceed with the adjudication proceedings. However the fact is that SEBI vide its letter dated 02.02.2010, advised the applicant that since the High Powered Advisory Committee recommended that the case may not be settled on the terms as proposed by the applicant, the proceedings kept in abeyance in the matter shall commence against the applicant with immediate effect. The noticee vide its aforesaid letter also made further submission (summary of which is mentioned in para 6 of Page no.3) and requested for an opportunity for placing all the evidences in the matter. Accordingly, final opportunity of hearing was granted to the noticee vide notice dated May 11, 2010 for the hearing scheduled on June 10, 2010. The noticee vide its letter dated May 17, 2010 sought for re-scheduling of hearing on June 01, 2010, June 07, 2010 or after July 03, 2010 on the ground that its lawyer will be out of town/country between June 09, 2010 to July 03, 2010. As requested, the hearing was rescheduled to June 07, 2010. Vide letter dated June 04, 2010, the noticee authorized Mr. Anay Khare, Head- Product Delivery, Mr. Natarajan, Complaince Officer, ESPL and Mr. Somasekhar Sundaresan, Partner, Jyoti Sagar & Associates to appear for hearing on its behalf. However, Mr. Somasekhar Sundaresan and Mr. M. Natarajan attended the hearing and made the

submissions. The ARs reiterated the reply submitted by the noticee vide its letters dated July, 09, 2007, March 19, 2009 and February 05, 2010.

i) As regards the allegation of failure to disclose Rabobank as promoters in the IPO of Yes Bank, the ARs had explained in detail and have submitted that Rabobank was not one of the promoter of Yes Bank Ltd. Mr. Ashok Kapur and Mr. Rana Kapoor were the main promoters of YES Bank Ltd and Rabobank was the "Co-Promoter" as per RBI's letter dated March 30, 2001. Further ARs had submitted that Rabobank was not a promoter as per the definition of Clause 6.8.3.2(m) of SEBI (DIP) Guidelines, 2000.

ii) As regard the allegation of Discretionary Allotment to QIB, the ARs had submitted that they only made recommendations to the Issuer company /Board of issuer company and the Issuer company finally decided to whom and what % of shares should be allotted. When questioned about the documentation of recommendation made by Lead manger (LM) and final allotment made by the issuer company in consultation with the LM, they undertook to submit the same along with their further reply.

iii) As regards the allegation of failure to redress investor grievances, ARs had submitted that there has been a factual error as all the complaints had been redressed. Further the ARs had also submitted that investor grievance is not a job of a Lead Manager and appears to be a role ambiguity.

iv) As regards the allegation of non-availability of the email data for all the QIB bids, the ARs had denied this charge and had stated that all the emails were available for all the QIB bids and the same will be submitted along with their further reply.

v) The ARs had also undertaken to submit their reply on the allegations made in the inspection report with regard to their role in Open offer by Uno Investment and Chryscapital; Shopper's Stop IPO; Declaration given by Intime Spectrum Private limited (Registrar to the open offer).

11. The noticee made its **Memo of Submission** vide its letter dated June 14, 2010 and reiterated its earlier submissions. The noticee submitted that the factual position is that Rabobank was originally named in an application to RBI as a person promoting the issuer, but after detailed procedures undertaken with RBI, the banking license was in fact issued only to Mr. Ashok Kapur and two other professionals Mr. Rana Kapoor and Mr. Harikirat Singh, the individual Indian Promoters. Rabobank was described as co-promoter by the reason of the support that it was providing to the promoters in a controlled and limited manner as permitted by RBI.

12. In addition to the allegations made in the SCN, the other diligent issues pointed out in the inspection report are-

    i) It was alleged that in case of Open offer by Uno Investment and Chryscapital to the shareholders of Shriram Overseas Finance Limited, the noticee has relied upon a letter on a plain paper from Chryscapital (Acquirer -person acting in concert, PAC) declaring that it has no pending litigation under applicable securities law. It is felt that the noticee should have at least secured above declaration on the letter head bearing common seal of the company.
    ii) As per the provision of 6.7.4 of DIP Guidelines, the Lead Merchant Banker shall verify and ensure that the persons whose names appear in this para are in the employment of the company as permanent employees. It was however observed that in case of Shopper's Stop IPO, the noticee has merely relied upon the Management's letter to the effect and have not counter checked it with any other documents such as the attendance record or salary slips etc of the employees.

13. With respect to the said diligent issues, the noticee has submitted the following reply vide memo of submissions dated June 14, 2010-

    i) As regards the observation that the declaration from Chryscapital should have been on the letter head bearing Common seal is concerned, the acquirer (Chryscapital) is not a body corporate incorporated in India under the provisions of the Companies Act, 1956. They are overseas entities incorporated for the purpose of acquisition under different jurisdiction. The entity has been following a consistent practice of applying in the same letter head for other Indian Regulatory approvals including FIPB/RBI. The papers relating to incorporation were made part of the document for inspection. We derive our comfort based on the above background and note for future reference.
    ii) The reference of clause 6.7.4 of the erstwhile DIP Guidelines seems to have been wrongly quoted in the inspection report. The correct clause appears to be 6.9.5.8. This clause basically deals with the order of disclosures to be made in the offer document – especially with reference to Key Managerial personnel. The requirement is as under: - 6.9.5.8 (b) "the lead merchant banker shall verify and ensure that the persons whose name mentioned in this paragraph (key management personnel) are in the employment of the issuer company as permanent employee of the Company." In the case of Shopper's stop, there were 6 persons

shown as Key Managerial Personnel with whom we met personally and interacted extensively during the IPO process. Two out of these have taken responsibility for the disclosures in the prospectus by signing the declaration page. The certification received from the Management was over and above our meetings as mentioned above. Copy of the RHP disclosing 6 persons as Key personnel is enclosed.

14. However though undertaken during the personal hearing held on June 07, 2010, the noticee has failed to submit the documentation of its recommendation made to the Issuer company in relation to QIB discretionary allotment.

CONSIDERATION OF EVIDENCE AND FINDINGS

15. I have taken into consideration the facts and circumstances of the case and the material made available on record.

16. **Chapter (i)**

Part A

a) With respect to the first allegation against the noticee in the SCN as mentioned in para 4 (i) of page 2, the details / letters / correspondences made available with regard to the incorporation of Yes Bank Ltd. were perused. Yes Bank Ltd. was incorporated as a Public Limited Company under the Companies Act, 1956 on November 21, 2003. It is noted from Inspection Report (IR) that RBI vide its letter dated May 24, 2004 granted licence no. 74 to Yes Bank Ltd. under Section 22 (1) of the Banking Regulation Act, 1949 to commence banking operation on certain terms and conditions. The conditions were-

   i) The promoters' contribution shall be maintained at a minimum of 49% of the paid up capital at all points of time.
   ii) 49% of Yes Bank's pre issue share capital held by Promoters (domestic and foreign) was to be locked-in for five years from the licensing of the Bank.

   The fact that RBI had imposed the condition only on promoters was evident from the said letter.

b) In this regard it is observed that to meet the 49% promoters' contribution requirement, 29% of share capital held by Mr. Rana Kapoor (Rana) & Mr. Ashok Kapur (Ashok) and 20% of share capital held by Rabobank were taken into account and the same was locked in for a period of 5 years upto May 24, 2009.

c) In fact it has been stated in the prospectus that the requirement of 49% of pre issue capital held by promoters (domestic and foreign) has been met by locking –in equity shares representing 29% of the share capital held by Rana & Ashok and 20% of the share capital held by Rabobank.

d) However on perusal of the prospectus, it is observed that under the Heading Shareholding Pattern as on May 24, 2005 post issue promoters and promoter groups' shareholding was shown as 38.62% (comprising of Ashok -13.01%, Rana – 7.41%, Doit 5.60%, Mags 6.30% and Morgan 6.30%) (page 15 of the Prospectus). Ashok and Rana were shown as promoters along with Doit, Mags and Morgan as Promoter Group. However Rabobank has not been classified as promoter in the prospectus under this head.

e) The noticee has submitted that Rabobank was not promoter of Yes Bank and therefore was not disclosed as promoter in the prospectus. If I go by the argument of the noticee that Rabobank was not a promoter of Yes Bank then as per the disclosure under "shareholding pattern of the promoters as on May 24, 2005' only 38.62% of post issue promoter's contribution have been locked in for 5 years which is well below the percentage prescribed by RBI which was the basic condition for granting license to the Yes Bank. To comply with the basic licensing condition of RBI (i.e. to maintain the minimum promoters' contribution of 49%) Rabobank was included in the promoter category for the 49% promoters' contribution requirement and its shares were also locked in for five years as prescribed by RBI. Therefore from the available facts, in my opinion, it can be held that Rabobank was promoter of Yes Bank Ltd.

f) In this regard SEBI had also written to RBI on December 12, 2005 wherein certain information/clarification was sought. RBI had replied vide its letter dated December 22, 2005 (reference number DBOD NO PSBD/5839/16.01137/2005-2006). The queries posed to RBI and their reply have been reproduced below -

SEBI Query – Whether Yes Bank had shown Rabobank International as the promoter group company for grant of license to carry on banking business.

Reply of RBI - The application dated March 30 2001 submitted by Shri Harkirat Singh, Rana Kapoor and Ashok Kapur for license to commence banking business showed Rabobank International as a co-promoter.

SEBI Query- Whether RBI had stipulated a condition that the post issue promoter holding of Yes Bank shall be maintained at 49% at all times.

Reply of RBI - The terms and conditions of the license issued to Yes Bank Ltd by Reserve Bank of India under Section 22 of the Banking Regulations Act , 1949 stipulated that the promoters ' (domestic and foreign) Contribution should be minimum of 49 percent of the paid up capital . Promoters contribution shall be locked in for a minimum of five years from the date of licensing of the bank. The promoters' holding in excess of the minimum proportion of 49 percent should be diluted after one year of the bank's operations. (In case divestment after one year is proposed to be spread over a period of time this would require specific approval of RBI)

SEBI Query – Whether as a promoter of Yes Bank, Rabobank International was required to lock in their contribution for a five year period

Reply of RBI - As a co- promoter of Yes Bank Ltd., Rabobank International required to lock in their contribution for a minimum period of five years from the date of licensing of the bank

g) From the above discussions, it is clear that Rabobank was co- promoter of Yes Bank Ltd. Further as observed in the IR the correspondences with RBI dated May 24, 2004 and November 27, 2004, it is clear that Rabobank has been declared as a Promoter entity to RBI by Yes Bank. However in the prospectus, on page 15 under the heading "shareholding pattern of the promoters as on May 24, 2005" Rabobank was not shown/classified as promoter and subsequent disclosures thereon relating to promoters on relevant clauses/heads were not made in the prospectus.

h) It may also be added that the term 'co-promoter' as used by the noticee has not been defined/doesn't find mention in SEBI (DIP) Guidelines, 2000 and Companies Act, 1956. However in my opinion considering the facts and circumstances of the case, I do not find difference between the term 'promoter' and 'co-promoter' as contended by the noticee & therefore Rabobank falls under the category of promoter and all attendant disclosures with regard to Rabobank should have been made under relevant heads / clauses in the prospectus which would have enabled the investors to take an informed investment decision.

Part B

i) In this regard the noticee submitted that though the term 'promoter' is not defined under SEBI (DIP) Guidelines, 2000 it was guided by the explanation 1 of Clause 6.8.3.2(m) of SEBI (DIP) Guidelines, 2000 in this regard. The

noticee submitted that as per the said explanation; the term Promoter for the purpose of DIP Guidelines shall include:

a) The person or persons who are in overall control of the company
b) The person or persons who are instrumental in the formulation of a plan or programme pursuant to which the securities are offered to the public
c) The person or persons named in the prospectus as promoter(s).

j) The noticee submitted that in the instant case, Rabobank was neither in control of Yes Bank Ltd. nor were they instrumental in the formulation of a plan or programme pursuant to which the IPO was made. Accordingly, Rabobank was not named as the promoter in the Red Herring Prospectus and Prospectus of Yes Bank Ltd.

k) In this regard it is noted that in page no 75 of the prospectus under the Head 'History and Certain Corporate Matters', the prospectus states that "*The application to the RBI for the grant of a license to set up a new private sector bank in India named 'Rabobank International Holding' as a* ***co-promoter of the proposed bank****."*

l) Further it also states that "*The press release issued by RBI at the stage of the grant of the "In Principle" approval stated that Mr. Ashok Kapur and two other banking professionals (Mr. Rana Kapoor and Mr. Harkirat Singh) with Rabobank International Holding have applied for a license.* Further*, the press release stated that the high level committee has recommended the applications of Mr. Ashok Kapur and two other banking professionals (Mr. Rana Kapoor and Mr. Harkirat Singh) with Rabobank International Holding have been found suitable for setting up a new bank in the private sector*."

m) This makes it amply clear that other three individuals with Rabobank got a license for setting up a new bank in the private sector i.e. Yes Bank Ltd. and Rabobank was named as co- promoter of Yes Bank Ltd. in the prospectus. Therefore even if I go by the contention of the noticee, in my opinion Rabobank falls under the definition of promoter of Yes Bank as concluded in Part A.

Part C

n) The noticee further submitted that Rabobank had 2 nominee Directors in the Board out of 12 directors and thereby was neither in control in Yes Bank nor was instrumental in the formulation of a plan or programme pursuant to which the IPO was made.

o) However in addition to the 2 nominee directors, the following role of Rabobank in Yes Bank is also noted -

i. Page 95 of the prospectus- Rabobank International Holding also has the right to nominate one non-rotational director on the Board.

ii. Page 187 of the prospectus- The Indian Partners shall propose the names of the first three Independent Directors, who upon approval by Rabobank, shall be appointed as such by the Board.

iii. Page 189 of the prospectus- Rabobank shall cause the Rabo Representative Director to vote along with the IP Representative Directors for the appointment of the Chairman and the CEO and Managing Director to the relevant Committees of Directors (as indicated by the Indian Partners).

Part D

p) The noticee further submitted that the person defined under a connotation of a promoter or co-promoter by a financial institution or RBI or Government etc. may not necessarily be called a promoter going by other defined connotations such as by SEBI Guidelines. In this reference it may be noted that different stands as regards disclosures on promoters (i.e disclosure made to RBI and what is stated in the prospectus) is not maintainable. This stand of the noticee amounts to contradiction wherein on one hand Rabobank has been considered as a co- promoter of Yes Bank for obtaining banking license and in the IPO prospectus filed with SEBI/ ROC/issued to the public, the same entity has not been shown as a promoter entity in the prospectus on relevant clauses / heads ("Shareholding Pattern of the promoters as on May 24, 2005", "Our Promoters" etc.) and attendant disclosures were also not made.

q) The noticee further submitted Rabobank was mentioned as co-promoter in the application made to RBI and its intention was to participate with the Indian Promoters as "technical partner" which was brought out in the initial application made by the Indian Promoters as well as Rabobank to the Reserve Bank of India.

r) It is noted that noticee has used various jargons to term Rabobank like technical partner, financial investor, co-promoter, public investor etc. But the fact being that Yes Bank was given license by RBI considering contribution of Rabobank (of 20%) to the Promoters contribution of 49% and the same was locked in for 5 years as promoters contribution makes it amply clear that Rabobank was indeed a promoter of the Yes Bank. However in the prospectus, on page 15 under the heading "shareholding pattern of the promoters as on May 24, 2005" Rabobank was not shown/classified as

promoter and attendant disclosures thereon were not made in the prospectus. It may be noted these are very important disclosures and the same should have been brought out clearly in the prospectus which would have enabled investors to take an informed investment decision.

Part E

s) The noticee also submitted that Primary responsibility of disclosures rest with that of the Issuer Company and in terms of SEBI (DIP) Guidelines, 2000, DRHP/ RHP is required to be signed by all directors of the company confirming the disclosures and the responsibility to ensure the content reflects actual position is that of the Issuer Company.

t) In this regard, I would like to refer to "Disclaimer Clause" mentioned in page 145 of the Prospectus which states that- "*It should also be clearly understood that while the company is primarily responsible for the correctness, adequacy and disclosure of all relevant information in the prospectus, the Book Running Lead Managers are expected to exercise due diligence to ensure that the company discharges its responsibility adequately in this behalf and towards this purpose, the Book Running Lead Managers, DSP Meriil Lynch Ltd. and Enam Financial Consultants Pvt. Ltd. have furnished to SEBI Due Diligence Certificate dated March 16, 2005 and June 01, 2005 in accordance with the SEBI (Merchant Bankers) Regulations 1992 which reads as follows-*

1. *…*
2. *…*
3. *We confirm that-*

   …the disclosures made in the prospectus are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue."

u) In view of the above disclosure/confirmation made in the prospectus and the Due Diligence Certificate furnished by the Lead Manager to SEBI, the contention of the noticee is not fully convincing.

v) In view of the aforesaid discussions made in para 16 (a) to 16 (u), it can be held that the noticee has failed to exercise due diligence in disclosing Rabobank as promoter of Yes Bank Ltd. in the prospectus.

17. **Chapter (ii)**

a) The second allegation against the noticee in the SCN as mentioned in para 4 (ii) of page 2, the noticee denied this charge and submitted that all bids in respect of whom email were purportedly missing were examined pursuant to inspection. In every single bid, the bid form was received through email or fax or physically from the relevant custodian in every single case. The noticee has submitted the documentation with reference to the same vide its letter dated June 14, 2010 and the same is taken on record, therefore this allegation is being dropped.

18. **Chapter (iii)**

a) The third allegation against the noticee was that the noticee had failed to exercise due diligence with reference to discretion pertaining to the allocation of shares to QIBs etc, for instance no Indian Financial Institutions or Banks are considered eligible in 'Platinum Category' and preferential treatment was given to few entities. It was alleged that FII such as Goldman Sachs, BSMA, UBS etc. have been given preferential treatment in allotment of shares. It was further alleged that there is no consistency in allotment of shares within the same category. In this regard it was also alleged that the noticee had failed to fulfill its obligations as a merchant banker in a professional and diligent manner.

b) IR further observed that within the QIB category, major chunk of the shares have been allotted to the FII category and the FI /Bank /VC category received a very negligible share in the QIB category. As against the number of shares applied also FIIs manage to get larger share as compared to MFs and the FI /Bank /VC category appears to have been overlooked while allotting the shares. The details of the same is reflected in the table below-

Table 1: Allotment of shares within the QIB Category

	% of shares allotted within QIB Category			**% of shares Allotted Against Applied Qty.**		
Issue	**FII**	**FI, Banks & VC**	**MF**	**FII**	**FI, Banks & VC**	**MF**
UTV	77.25	2.51	20.24	6.01	1.10	5.87
Datamatics	60.04	1.81	38.15	5.43	2.28	4.73
Dishman	50.80	0.00	49.20	3.25	0.00	3.71
Gokaldas	67.07	2.91	30.03	2.28	0.40	2.20
India Infoline	75.15	1.02	23.83	9.75	5.54	9.15
Indoco	49.63	12.95	37.42	3.05	1.22	3.14
IVRCL	70.85	6.78	22.37	4.43	1.64	4.75
Average	**64.40**	**4.00**	**31.61**	**4.89**	**1.74**	**4.79**

c) IR also states that the noticee had considered 19 FIIs as eligible for 'platinum' category whereas only two Mutual Funds are considered as eligible for 'Platinum' category (the highest category across all QIB's and eligible for maximum allotment of shares against the applied quantity). No Financial Institutions or Banks were considered eligible as 'Platinum' The names of the QIBs, which were considered eligible for 'platinum' category, are given below:

Table 5 : Platinum Category of the noticee

FIIs (19)	Merrill Lynch, HSBC Finserv Ltd, ABN Amro, BSMA Ltd, Citigroup, Deutsche Sec, Goldman Sachs, Macquarie Bank Ltd., UBS, Abu Dhabi, Deuts Ind Eq, Fid Funds, Fidelity, Franklin Templeton Inv, Gov. of Sing, Hagstromer (Templeton), HSBC Global, Jardine Fleming, Pictet.
MFs (2)	Templeton, UTI
FIs, Banks	No Indian Financial Institutions or Banks are considered eligible in 'Platinum' category.

d) In this regard the noticee has submitted that Discretion was permitted as per SEBI (DIP) Guidelines, 2000 and part of terms of offer and therefore done within legal framework. Further the final responsibility for allotment rests with the Issuer. The noticee had submitted that they only made recommendations to the Issuer company /Board of Issuer company and the Issuer company finally decided to whom and what % of shares should be allotted.

e) In this regard it may be noted that though submitted by the noticee that the final decision lies with the Issuer Company, the Merchant Banker has a greater role to play in arriving at the recommendations of allotment on the basis of which the Issuer Company decides and Merchant Banker is party to the decision making process for allotment of shares to QIB. The same is evident from the letter of the noticee dated 22/12/2003 addressed to UTI Asset Management Company Pvt. Ltd. wherein it is stated that the Issuer Company jointly in consultation with the BRLM makes the decision on allotment of shares in the QIB category.

f) Further the 'Statement of Inter se allocation of responsibilities for the Issue' mentioned in the prospectus states that BRLM shall be responsible for pricing and QIB allocation.

g) In this regard during the personal hearing held on June 07, 2010 the noticee was advised to furnish the documents of recommendation made by LM and final allotment made by the Issuer company, the noticee undertook to submit the same along with its further reply. However, though undertaken to submit within a week, the noticee has failed to furnish any documentation regarding its recommendations made to the issuer company till date.

h) Though the noticee in its reply dated 19/03/2009 has stated that no investor's complaints/grievances were received about the discretionary QIB allocation process, the noticee has submitted two complaints received from UTI Mutual Fund dated 15/12/2003 & 09/01/2004 and SBI Mutual Fund dated 12/03/2004 complaining substantially proportionately lower allotments/unfair allotment of shares in QIB category.

i) The arbitrary allotment of shares to selected category shows that the noticee has not exercised its discretion with utmost care, caution and in a judicious manner and therefore has failed to fulfill its obligations as a merchant banker in a professional and diligent manner.

19. **Chapter (iv)**

a) With regard to the fourth allegation in the SCN as mentioned in para 4 (iv) of Page 3, the noticee had submitted that it had ensured that a duly registered registrar and share transfer agent with a capacity and standing was engaged. The merchant banker is not obliged to play the role of registrar and share transfer agent. He is only required to oversee, taking adequate steps in the process. Investor grievance is not a job of a Lead Manager and appears to be a role ambiguity.

b) It may be noted that the framework of the SEBI (Merchant Bankers) Regulations, 1992 deals with duty of merchant banker to resolve investor complaints. Further Clause 7.3 of SEBI (DIP) Guidelines, 2000 states that-

7.3 Redressal of Investor Grievances

7.3-1 The Post-issue Lead Merchant Banker shall actively associate himself with post-issue activities namely, allotment, refund, dispatch and giving instructions to Self Certified Syndicate Banks and shall regularly monitor redressal of investor grievances arising therefrom.

c) Therefore it is also the duty of the Merchant Banker to monitor the redressal of investor grievances. Even as per the statement of Inter se allocation of responsibilities for the issue, the Lead Manager shall be responsible for ensuring that the agency such as Registrar fulfils their functions and enable him to discharge this responsibility through suitable agreements with the Issuer Company. Therefore the contention of the noticee that handling of investor grievance is not a job of Lead Manager is not convincing/ acceptable.

d) In this regard though the noticee had submitted that the 35 complaints could not be addressed on account of certain legal/ other constrains like incomplete information etc – not on account of lack of effort from its side, it had explained the individual reasons why these complaints could not be addressed to the inspecting team in detail. The noticee submitted that during the inspection, there were 11 outstanding complaints for which active follow up with the issuer/ investors are being done. Further, continuous efforts were on and steps were initiated to resolve these complaints. The submissions of the noticee are taken into account and the benefit of the same is given to the noticee.

20. **Chapter (v)**

a) The **fifth allegation** of the SCN mentioned in para 4(v) of Page 3 was that the noticee had failed to exercise due diligence in properly monitoring the flow of applications and other matters pursuant to closure of the public issues. For example, in the Yes Bank IPO shares were allotted to applicants having non existing DP IDs and other irregularities. Registrar to an issue failed to detect the same and the noticee as post issue LM failed to notice and report the same to the Board thereby alleged to have violated the provisions of Guideline 7.4.1 of SEBI (Disclosure & Investor protection) Guidelines, 2000.

b) The IR states that in order to verify the role of the noticee to ensure that the Registrar weeds out the multiple, fictitious, benami applications, the allotment file produced by the noticee during inspection was analyzed and following observations were noted:

i. Shares are allotted to applicants having non-existing DP IDs

ii. Shares are allotted to multiple applications having same address

iii. Allotment of shares have been made to the applicants having same name, same address but different DP details.

iv. Shares were alloted to the applicants having different Name but same DP ID and same Address.

v. Shares were allotted to 699 applicants (out of a sample of 40,000 allottes), where age of the applicant was not mentioned in the application form.

vi. Shares were allotted to 9,257 applicants (out of a sample of 40,000 allottes), where name of the father / husband of the applicant was not mentioned in the application form.

c) IR states that it is expected that such applications are eliminated by the system without manual intervention. However, allotment of shares to these applicants suggests that either there were lapses in the system or there was a scope for manual intervention in the system. The Registrar and Share Transfer Agent to issue had failed to detect and weed out such applications. It is noted in IR that this act of omission by the Registrar and Share Transfer Agent was not noticed and reported by the noticee to the Board in violation of Guideline 7.4.1 of SEBI (Disclosure & Investor Protection) Guidelines, 2000.

d) In this regard the noticee had submitted that Post issue Merchant Banker is expected to work in tandem with intermediary, however it is not responsible for performing the act of the intermediary, Registrar in this case. At no point of time Registrar brought these facts to the attention of the noticee or it had reasonable suspicion of such omission or commission. The noticee further submitted that Clause 5.4.3.4 of SEBI (DIP) Guidelines, 2000 states that Registrar is primarily and solely responsible for issue management. Apart from the overall monitoring of a Registrar functioning, it is for the Registrar to bring to the BRLM's notice any irregularities or queries. The requirement of deputing officials as per Clause 7.4.1 of the SEBI (DIP) Guidelines, 2000 was followed by the merchant banker in the IPO of Yes Bank. Nothing amiss was noticed and therefore there was nothing to report.

e) Though the noticee has contended that it is not responsible for performing the act of the Registrar, it may be noted that the noticee is under an obligation to report the omission made by the Registrar to SEBI as per sub clause (ii) of clause 7.4.1 of the SEBI (DIP) Guidelines, 2000. As post issue merchant banker the noticee was expected to weed out fictitious, multiple, benami applications etc. and to follow up with various agencies connected with post issue such as Registrar and Bankers to the issue. It may be noted that the noticee has not shown any supporting documents/reports to substantiate its claim of having deputed its officials to oversee the functioning of the Registrar.

f) It may be noted that when questioned during the personal hearing held on 27/02/2009 about confirmations regarding the completion of all supporting documentation (certified copy of Memorandum and Article of Association, Board Resolution, Power of Attorney and proof of PAN) in case of the bid applications in YES Bank IPO mentioned in the Para 6 and Para 7 (as mentioned in para 7(iii) of page 8) of the Proceeding of the Meeting relating to allotment held at Mumbai on 2nd July, 2005 between Yes Bank Ltd, the noticee and the Registrar to the Issue, the noticee submitted that it is yet to receive full details of current status from the Registrar and it is actively following up. From this it is clear that even after five years from the date of allotment of shares, the noticee is not aware of the completion of supporting documents relating to bid application for the shares which had already been allotted five years ago and the noticee is still following with the Registrar for the same. From this the extent of due diligence exercised by the noticee is evident.

g) As per the statement of 'Inter se allocation of responsibilities for the issue' stated in page no. 9 of the Prospectus, the Lead Manager shall be responsible for ensuring that the agency such as Registrar fulfils its functions and discharge this responsibility through suitable agreements with the Issuer Company. Therefore the contention of the noticee that it has no legal relationship with the Registrar and the Registrar has failed to bring to the notice of the BRLM any irregularities is not acceptable.

h) In light of the above discussions and conclusions mentioned in para 16 to 20, it can be concluded that the noticee has violated the provisions of Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 and clauses 5.1, 5.1.1, 5.1.2, 5.3.3, 7.4.1, 7.7.7 of SEBI (DIP) Guidelines, 2000. From the above discussions, in my view the noticee has not adhered to mainly the following clauses of Code of Conduct as specified in Schedule III of SEBI (Merchant Bankers) Regulations, 1992. The text of the provisions is as under-

SEBI (Merchant Bankers) Regulations, 1992

Code of conduct.

13. Every merchant banker shall abide by the Code of Conduct as specified in *Schedule III.*

SCHEDULE III

CODE OF CONDUCT FOR MERCHANT BANKERS

1. A merchant banker shall make all efforts to protect the interests of investors.

2. A merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.

3. A merchant banker shall fulfil its obligations in a prompt, ethical, and professional manner.

4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

6. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

7. A merchant banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.

24. A merchant banker shall demarcate the responsibilities of the various intermediaries appointed by it clearly so as to avoid any conflict or confusion in their job description.

SEBI (DIP) Guidelines, 2000

5.1 The lead merchant banker shall exercise due diligence

5.1.1 The standard of due diligence shall be such that the merchant banker shall satisfy himself about all the aspects of offering, veracity and adequacy of disclosure in the offer documents.

5.1.2 The liability of the merchant banker as referred to in clause 5.1.1 shall continue even after the completion of issue process.

5.3.3 Due Diligence Certificate

5.3.3.1…

5.3.3.2…

5.3.3.3 The lead managers who are responsible for conducting due diligence exercise with respect to contents of the offer document, as per *inter se* allocation of responsibilities shall sign due diligence certificate.

7.4.1 (*i*) The Post-issue lead merchant banker shall maintain close co-ordination with the Registrars to the Issue and arrange to depute its officers to the offices of various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from collecting bank branches *Self Certified Syndicate Banks,* processing of the applications including *Application form for Applications Supported by Blocked Amount* and other matters till the basis of allotment is finalised, dispatch security certificates and refund orders completed and securities listed.

(*ii*) Any act of omission or commission on the part of any of the intermediaries noticed during such visits shall be duly reported to the Board.

7.7 Other Responsibilities

7.7.7 The post-issue lead merchant banker shall continue to be responsible for post-issue activities till the subscribers have received the shares/debenture certificates or refund of application moneys and the listing agreement is entered into by the issuer company with the stock exchange and listing/trading permission is obtained.

CONCLUSION:

21. Considering the facts and circumstances of the case, it can be concluded that the noticee has violated the provisions of Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 as discussed in pre paras and clauses 5.1, 5.1.1, 5.1.2, 5.3.3, 7.4.1 and 7.7.7 of SEBI (DIP) Guidelines, 2000. In view of the above, I am satisfied that the present case warrants imposition of penalty as per the provisions of the SEBI Act, 1992.

22. The violations stipulated in the above paragraphs make the noticee liable to the penalty under Section 15HB of the SEBI Act, 1992. The Text of the said provision is stated below-

> ***15HB.Penalty for contravention where no separate penalty has been provided.-***
> *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

23. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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*

24. With regard to the above factors to be considered while determining the quantum of penalty, I observe that from the material available on record it is difficult to quantify the amount of disproportionate gain or unfair advantage, the amount of loss caused to the investors as a result of the default of the noticee.

25. Having considered the facts and circumstances of this case and after taking into account the factors under section 15J of the SEBI Act, 1992, I find that a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) on the noticee would be commensurate with the violations committed by the noticee in this case.

ORDER

26. In exercise of the powers conferred under Section15 I of the Securities and Exchange Board of India Act, 1992 and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby, impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) on Enam Securities Pvt. Ltd. SEBI Registration no.- MB/INM000006856 in terms of the provisions of Section 15HB of the Securities and Exchange Board of India Act, 1992 for its violation of provisions of Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 and clauses 5.1, 5.1.1, 5.1.2,

5.3.3, 7.4.1, 7.7.7 of SEBI (DIP) Guidelines, 2000. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the noticee.

27. The penalty shall be paid by way of Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said Demand Draft shall be forwarded to the Chief General Manager- MIRSD.

28. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copy of this order is being sent to Enam Securities Pvt. Ltd. and also to Securities and Exchange Board of India, Mumbai.

Place: Mumbai
Date : December 31, 2010

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER