

ORDER UNDER SECTION 11 AND 11B OF SEBI ACT AGAINST M/S BARODA AGRO INDUSTRIES LIMITED AND ITS DIRECTORS MR. SANJAY A CHOKSI, MR. ARUN CHOKSI, MR. N K PATEL, MR. RAVINDRA PATEL, MR. PRAFUL C VIN, MR. PARAG MEHTA, MR. JAGDISH SHAH AND MR. AMIT N SHAH.

Baroda Agro Industries Ltd (BAIL) made private placement of shares in 1992, and it applied to the CCI for the permission to come out with public issue. In the meantime, CCI was scrapped and SEBI was constituted. The company made a fresh application to SEBI for coming out with a public issue and approval was granted on 19.11.93. Consequently, the company came out with a public issue for 27,00,000 equity shares for Rs.10/- at par which opened on 17/3/94 and closed on 21/3/94, the earliest closing date. Out of the issue of 27,00,000 shares offered to public, 6,48,000 shares were reserved for preferential allotment to NRIs/Persons of Indian Origin residing abroad, on repatriation basis.

Complaints were received from some investors alleging market manipulation in the scrip of BAIL by a group of brokers acting in collusion with the management of the company. Further, it was stated by the complainants that they had sold their shares in the market and given deliveries, but the same were returned by the stock exchange as "bad deliveries". These shares were declared as "bad deliveries" on the ground that the said shares were 'non-transferable' as they were from promoter's quota and were subject to "lock-in". The investors stated that they had purchased the said shares in 1992 on a firm allotment basis and at the time of sale they were told that the shares were freely tradable and transferable once the company came out with public issue in 1994 and the shares of the company were listed on the Bombay Stock Exchange, which gave trading permission with effect from 30.8.94. The complaining investors had sold their shares in the month of March-April '96.

In view of these complaints, the investigation was undertaken by SEBI, which revealed that shares which were issued/given on private placement basis in 1992 did not have the stamp of "non transferable" on the face of certificates. It was also noticed that investors to whom the private placement was made were not informed regarding the restriction on the transfer of their shares. BAIL which came out with public issue in 1994 and got listing and admitted for trading on the BSE on August 31, 1994. It was also seen from the notice of BSE which was issued at the time of giving listing permission that certain distinctive numbers of shares were notified as belonging to the promoters quota and were under the category of "non transferable". The notice also stated that shares issued on private placement basis in 1994 did not have stamp of "non transferable" on the face of the certificates. Consequently, it was observed that BAIL issued an undertaking to the BSE that company would take necessary steps to ensure that non transferable share certificates which have not been enfaced with an enfacement regarding their non transferability would not be sold in the market and the company would send to all the shareholders individually a circular containing distinctive numbers of all the shares which are non transferable. BAIL also gave an undertaking to the BSE that if, in spite of

this if such shares non transferable happened to be sold in the market, the company shall take responsibility of transferring such shares in the name of bonafide purchaser or arrange for replacing them with other transferable shares.

However, it was gathered during the course of investigations from the various complaints (received by SEBI) that BAIL did not inform these investors about the lock-in despite assurance to the exchange . As a result of this, when these investors sold the shares in the market in good faith the same were returned to them as bad deliveries for no fault of theirs. The investors who had sold these shares were therefore, forced to pick up shares in the ensuing auctions at much higher prices to give delivery for their obligations. As the price of scrip of BAIL was moving upward during the same period these sellers suffered financial losses. It was seen that the price of scrip of BAIL moved from Rs.35/- on 10.5.95 to Rs.90/- on 27.6.95. In view of this, it appears that this act of promoters of BAIL negated the concept of free transferability of equity shares and thereby promoters of BAIL violated the SEBI guidelines for Disclosure and Investor protection.

In view of the above, a show cause notice under Sec. 11 B of SEBI Act 1992 was issued to the company and its Directors asking it and its Directors to showcause why suitable directions should not be issued against the company and the Directors in the interest of investors.

The Company vide its letter dated 18/09/2001 replied to the show cause stating that the concerned shares were issued before the applicability of SEBI Guidelines. They have stated that they have submitted the details regarding non-transferability of shares to all the concerned stock exchanges at the time of listing. They have further stated that they have circulated a circular regarding non-transferability to all share holders as they had promised to BSE. They have also stated that they have taken back or replaced the non transferable shares of all the share holders who had approached them.

A hearing before the then Chairman SEBI was granted on 09/01/02. In the course of hearing, Chairman asked Mr. Sanjay Choksi (Director – BAIL) to come with a concrete proposal for compensating all the complainants who had suffered losses on account of covering their sale positions at higher prices, as shares delivered against their sale position were declared as bad delivery. BAIL was to come out with a concrete proposal latest by first week of February 2002. Mr. Sanjay Choksi agreed to come with such a proposal shortly. The company vide its letter dated 30/03/2002 requested for some more time to prepare the proposal.

The Company vide its letter dated 08/04/2002 submitted a proposal for moderate compensation to the original promoters quota share holders and who have complained to SEBI and Mumbai Stock Exchange and to company before 31/05/95. Subsequently another hearing was granted before me on 17/08/02. No one from the company turned up for the hearing.

On examination of material and evidence available on record, and submissions made from time to time, I am of the opinion that the Company has knowingly put the investors

in a piquant position and has negated the concept of free transferability of shares. The investors were not informed about the non transferable nature of the shares. I find that investors were led to believe that shares could be sold by them after the shares were listed and admitted for trading at the exchange. However, when these investors sold the shares in the market in good faith the same were returned to them as bad deliveries being under lock-in and consequently these investors were forced to pick up shares in the ensuing auctions at much higher prices to give delivery for their obligations. As the price of scrip of BAIL was moving upward during the same period these sellers suffered financial losses. BAIL was duty bound to replace such shares with good shares or transfer them in name of bonafide transferee. BAIL did not bother to do so. This is nothing but a fraud on investors. Despite an opportunity being given by then Chairman SEBI to rectify their mistakes, no serious intention to compensate the investors have been shown.

In view of the above, I in the exercise of powers conferred upon me by Sec. 4 (3), 11 and 11 B of SEBI Act 1992 direct that M/s Baroda Agro Industries Ltd. be prohibited from accessing the capital markets for a period of three years. I also direct that Mr. Sanjay A Choksi, Mr. Arun Choksi, Mr. N K Patel, Mr. Ravindra Patel, Mr. Praful C Vin, Mr. Parag Mehta, Mr. Jagdish Shah and Mr. Amit N Shah Directors of Baroda Agro Industries Ltd. are debarred from dealing in securities for a period of three years. This order shall come into force with effect from 15/11/2002.

G N BAJPAI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : 5th November, 2002
Place: Mumbai