

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER SECTION 11B OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST SHRI SATYENDRA N. GANDHI IN THE MATTER OF INCAP FINANCIAL SERVICES LTD.

1.0 M/s Incap Financial Services Ltd. (hereinafter referred to as "IFSL"), had come out with a public issue of 25,40,000 equity shares of Rs.10/- each for cash at par aggregating Rs.2,54,00,000/-. The issue had opened on 9.5.95 and closed on 20.5.95. Investigations were conducted into the public issue of IFSL by SEBI pursuant to complaints received from Shri Satyendra Nath Gandhi (hereinafter referred to as S.N. Gandhi) and also others in respect of alleged manipulation in promoters' contribution, late subscription in public issue, etc.

1.1 Investigations have revealed that Shri S.N. Gandhi had wrongfully cornered the shares of IFSL and was found to have off loaded them in the market for his personal benefit. In the buy back agreement which is seen to have been entered between Darshan Investments Pvt Ltd. and Wizma Consultants (a promoter group company), Shri S N Gandhi was found to have been a witness to it.

Further, it was found that Shri S N Gandhi was aware of the irregularities that had led to the manipulation in the scrip. Shri S.N.Gandhi was also found to have been a witness to the agreement for buy back of shares between M/s Wizma Consultants and M/s B R Investments. He was stated to have kept in his custody, shares of IFSL, which were also offloaded in the market. These actions of Shri S N Gandhi were against the interest of genuine investors in the scrip and detrimental to the orderly development of the capital market.

2.1 A show cause notice was issued to Shri S N Gandhi vide letter dated November 28, 2002 wherein he was called upon to show cause as to why appropriate directions should not be issued under SEBI Act or Regulations framed thereunder.

2.2 Reply was submitted by Shri S N Gandhi on 17/12/2002 wherein he had sought more time for filing a detailed reply due to his indisposition. Thereafter, a letter was sent by SEBI extending the time to file the reply till 31/1/2003. The reply of Shri S N Gandhi dated 27th January 2003 was received on 31/1/2003. In his reply, it was stated that he had joined M/s Incap as a director on 1st September 1995 and M/s Wizma Consultants on 24th September, 1995 after the expiry of his brother, Shri U.N.Gandhi. However, he denied having been ever involved in the affairs of the IFSL before that. It was also said that he was not in good terms with his brother and prior to the death of his brother, he had never met Mr. Kanti Patel. Therefore, he said that the allegation of Mr.Kanti Patel that he had made Shri Patel to sign the blank stamp paper was incorrect.

2.3 In his reply, he also stated that he was not involved in the public issue of IFSL. According to him, on the death of his brother, Shri U.N. Gandhi, Shri U.N. Gandhi's family was living with him and due to the pressure from creditors, he was forced to visit the premises of the company 10-12 days after the death of his brother. In view of these facts, he stated that there was no content in the allegation that he was a witness to the agreement signed before the death of his brother. He also stated that the signature stated to have been made on July 22, 1995 could not be correct in view of the stamp paper showing the date of purchase as July 25, 1995.

2.4 He also referred to the agreement dated 2.9.95 saying that he had only signed as a witness of Mrs. Gita Gandhi's (wife of U.N. Gandhi) signature and not representing the company / its directors. He also mentioned that the entire business of the company is being looked after by Mr. Kanti Patel, Mr. R.S. Sharma and Mr. Kirti Kotaria after the death of his brother and that the deal and agreement had been prepared by these people.

2.5 It was stated by Shri. S.N. Gandhi in his reply that he had not known Mr.Ramesh Shah or M/s. B.R. Investments before his brother's death and that the share certificates were handed over to Mr. Shah by Mr. Dilip Gajjar in the capacity of the authorized person of the company.

2.6 He also submitted that Shri U.N. Gandhi had not handed over any shares certificate to him. He denied having had them in his custody or having sold in the open market with the help of Mr. Ramesh Shah. He also said that he was the first person to have lodged the complaint before all the concerned authorities about the irregularities of the company and it was not correct to have initiated proceedings against him on the basis of statement made by Kanti Patel. He also requested for supplying him with the documents and statements on the basis of which SEBI had concluded that the irregularities about IFSL were within his knowledge. He also sought for the evidence based on which SEBI have concluded that the entire share capital was lying with him and / or that it has been sold in the market through Mr. Ramesh Jain of M/s B.R. Investments. It was also mentioned that Shri Kanti Patel had terminated the directorship of Shri S.N. Gandhi on the allegation that he had not attended the meeting of the Board of Directors / not taking part in Company's business.

3.1 An opportunity of hearing was afforded to Shri S.N. Gandhi on March 05, 2003 which was communicated to him vide letter dated February 20, 2003. On March 03, 2003, Shri S.N. Gandhi had sent a letter to SEBI asking for adjournment of the hearing by 30 days i.e., in the first week of April. Thereafter, a further communication dated March 19, 2003 was sent fixing the date of hearing for April 09, 2003. Another letter was sent by Shri Gandhi seeking for further extension by 40 days. As adjournment has already been granted once, no further extension can be granted and I proceed to pass this order after considering his reply to the show cause notice.

4.1 M/s. Incap Financial Services Ltd. having its registered office at 236, K.T. Plaza, Fuvara, Gandhi Road, Ahmedabad - 380 001 came out with a public issue of 25,40,000 equity shares of Rs.10/- each for cash at par aggregating Rs.2,54,00,000/-. The issue opened for subscription on 09/05/1995 and closed on 20/05/1995. As per the prospectus dated 10.4.95, Shri Urmilesh N. Gandhi, brother of Shri S N Gandhi was one of the promoter / director of Incap Financial Services Ltd.

4.2 By July 1996, SEBI had received a letter from Shri S.N.Gandhi stating that there were fake / forged shares of the company which had come in for transfer. A further letter from him alleged irregularities in the public issue of the company. It was also mentioned in the letter that the promoter's quota was not brought in and the issue was not fully subscribed and the same was subscribed at the instance of his brother with the help of one M/s. Darshan Investment (P) Ltd. (hereinafter referred to as DIPL) and Viswapriya Financial Services and Securities Ltd. (hereinafter referred to as VFSSL).

4.3 Investigations had revealed that the public issue of IFSL had not received the minimum genuine subscription of 90% of the issue and an illusion had been created by Shri Urmilesh N. Gandhi, brother of Sri S N Gandhi regarding subscription to the public issue and promoter's subscription of IFSL. Investigations also revealed that a major part of the subscription to the public issue has been brought in much after the closure of the issue in order to create an illusion of 90% subscription and the same had been paid back immediately. The issue thus had not elicited genuine subscription of 90% and an illusion was created that it was subscribed.

4.4 In the public issue, 27 applicants were found to have subscribed to the issue using stock invests worth Rs.180 lacs issued by Global Trust Bank and Central Bank of India. These stock invests were found to have been purchased by a single entity, namely, VFSSL. The amount subscribed to by the 27 applicants were found to have been paid back to VFSSL by IFSL with due interest through the public issue account of IFSL on 24/7/95. Apart from these 27 applications, DIPL was also found to have applied for 6,00,000 equity shares of IFSL. The money that had been received from DIPL was also found to have been paid back to them. Investigations revealed that DIPL subscribed to nearly 25% of the public issue vide application no. 380505 dated 20/05/1995 for 6,00,000 equity shares of IFSL. DIPL had enclosed with their application cheque no. 699862 for Rs.60,00,000 drawn on Bank of Baroda, Gorwa Branch favouring Punjab National Bank A/c IFSL Public Issue. The said cheque though purported to have been enclosed with application dated 20/05/1995 has infact been issued only after the closure of the issue. The set of cheque book bearing serial nos. starting from 699851, containing cheque no. 699862 had been issued to the Account holder of Bank of Baroda only on 14/06/1995 whereas the public issue of IFSL closed on 20/05/1995. Hence, it would not have been possible to enclose cheque no. 699862 dated 20/05/1995 with application form dated 20/05/1995. Hence, it was evident that DIPL had subscribed to nearly 25% of the public issue after the closure of public issue with a view to bail out the issue of IFSL, when it failed to elicit minimum subscription of 90%.

Further, investigations revealed that DIPL entered into a buyback arrangement with Wizma Consultants (Pvt.) Ltd., a promoter group company, vide agreement dated 22.07.1995 in which it was specifically stated that DIPL was holding 5,20,000 equity shares of IFSL which DIPL had agreed to sell to Wizma. The signatories to this agreement were Shri R.S. Thakka, Director, DIPL and Smt Gita N. Gandhi, wife of Shri U.N. Gandhi. In this agreement Shri S. N. Gandhi had signed as a witness. Investigations revealed that S.N.Gandhi had witnessed the agreement between DIPL and Wizma Consultants (P) Ltd. for the buy back of IFSL shares and had signed on the agreement as witness. Though Shri S.N. Gandhi has disputed that the date of stamp paper is 25.07.1995, a careful reading of the stamp paper shows that the date is 25.02.1995. Also he has not stated that the signature is not his. If this signature was forged he should have brought it to the notice of the investigating authority. Hence, he cannot now take the plea that he was unaware of how the public issue subscription was garnered.

4.5 During the investigation, it was found that by merely depositing cheques towards the promoter's subscription, which subsequently bounced, Shri Urmilesh Gandhi had depicted a false picture of infusion of Rs.121 lacs by the promoters in order to satisfy the requirement of promoters contribution.

4.6 Investigations had also revealed that after printing the share certificate at the company's premises, the share certificates were dispatched only to 36 allottees out of 91 allottees. The remaining share certificates, more particularly those pertaining to the aforesaid 27 applicants, were not dispatched. Shri Kantibhai Patel, Chairman, IFSL, had stated on oath, during investigation that the share certificates printed in the office of Sri Urmilesh Gandhi were retained in the custody of Shri S N Gandhi and that Shri S.N.Gandhi had sold these shares through various brokers. Shri Kantibhai Patel had also alleged that Shri S.N.Gandhi had threatened and obtained his signature on blank letter heads and stamp papers. He had also stated that Shri S.N.Gandhi had offered to pay Rs.15 lakhs for his resignation from the Chairmanship of the Company and had actually paid Rs.1 lakh by cheque and Rs.50,000 by cash. .

4.7 From the facts and circumstances of the case, it appears that Shri S.N.Gandhi was fully aware of the entire irregularities that were going on in IFSL and had still chosen to become a director of IFSL on 1.9.95 upon the death of Sri Urmilesh N. Gandhi and reportedly had taken over the management of IFSL. In the complaint given by S.N.Gandhi, it was said that he had no involvement in the sale of the shares which was stated to be by an agreement dated 2.9.95 between Wizma Consultants (P) Ltd. and BR Investments. However, this was found to be incorrect as the agreement was found to have been witnessed by Shri S.N.Gandhi alongwith Shri Kirti Kotaria. Further, certain shares stated to have been printed were retained in the custody of Shri S N Gandhi and the same were found to have been sold in the market through Shri Ramesh Jain of B R Investment which is borne out by the net sale position in the shares of IFSL by Gawde Finance (P) Ltd. through B R Investments in settlements No.B/5 (3.5.96 to 24.5.96).

4.8 Summons issued to B R Investment had come back undelivered. Summons were also issued to Shri Ramesh Jain but he did not respond.

4.9 In the light of the above, I find that Shri S N Gandhi had wrongfully cornered the shares of IFSL and that he had off loaded them in the market for his personal benefit. Having been a witness to the agreement dated 2.9.95 between Wizma Consultants (P) Ltd. and B R Investments, and also being a witness to the agreement between Wizma and DIPL, he has indirectly participated in defrauding the investors by making the issue appear fully subscribed. The reason for obtaining such wrongful subscription was only to create an illusion and thereby induce the purchase or sale of securities by genuine investors. Further, the said conduct of Shri S N Gandhi is not in the interest of genuine investors in the scrip and also detrimental to the orderly development of the capital market.

4.10 Therefore, in exercise of the powers conferred upon me under Section 4(3) read with Section 11 B of SEBI Act, I hereby direct Shri S N Gandhi not to buy, sell or deal in securities, in any manner, directly or indirectly, for a period of two years. This order shall come into force with immediate effect.

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai

Date : 12th August, 03