

ORDER UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST PUNJAB NATIONAL BANK, SHAHIBAUG BRANCH

1. Punjab National Bank (hereinafter referred to as 'PNB') is a SEBI registered Bankers to an Issue. PNB acted as Bankers to an Issue in the public issue of Maha Chemicals Ltd. (hereinafter referred to as 'MCL') SEBI conducted investigation into the irregularities in the public issue of MCL and violation of inter alia the provisions of SEBI (Bankers to an Issue) Regulations, 1994 and other regulations.
2. During the course of investigation, based on the findings it was inferred that Punjab National Bank, Shahibaugh, Ahmedabad Branch (hereinafter referred to as 'the Branch') accepted the applications accompanied by stock invests, which were dated much after the closure of the issue. Further, the investigation, revealed, inter alia, the following :
 - 2.1 Shares were issued under the public category to Superior Chemicals Limited (SCL), a sister concern of MCL. It was noted from the list of cheque applications collected by PNB that SCL had submitted an application no.1206777 for 5 lakh shares amounting to 16% of the issue size accompanied by cheque no. 088341 drawn on the Branch only after the closure of the issue.
 - 2.2 Applications to the tune of 17% by way of stock invests and 16% by way of cheque were brought in much after the closure of the issue. If these late applications are excluded, the issue would have been subscribed only to the extent of 67% and would be deemed to have failed.
 - 2.3 The Branch had handed over the original applications along with stock invests to MCL, whereas as per procedure laid down they are required to send the applications to the Registrars to the Issue. This despite the fact that the Registrars, Nipar Financial Services Pvt. Ltd. (Nipar), was having a branch office in the same city itself. By handing over the stockinvests to MCL, it was possible for the stockinvests to be cancelled without realisation. By accepting applications after closure of issue from persons apparently connected to the promoters and from sister concern of MCL, the bank had enabled the issue to be deemed fully subscribed and get listed, and enabled the promoters to garner a larger chunk of shares in the public issue.
3. Based on the findings of the investigation, SEBI vide order dated 22nd March, 2001 appointed an Enquiry Officer to enquire into the affairs of the Branch in the alleged irregularities committed by it in the public issue of Maha Chemicals Ltd. and possible violations of the provisions of inter alia the following :
 - a) Securities and Exchange Board of India Act, 1992;
 - b) Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994.
4. The Enquiry Officer submitted his report on 18.12.2002. EO, in the said report found that the Branch failed to exercise due diligence and ensure proper care which is in violation of clause (2) of the Code of Conduct which mandates that "a banker to an issue shall exercise due diligence, ensure proper care" and recommended that the Branch may be debarred from carrying out the activities as a Banker to an Issue for a period of 2 months.
5. Consequent upon above, in terms of regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said regulations') a show cause notice dated 28.04.2003 was issued to PNB to show cause as to why the penalty as recommended by the enquiry officer should not be imposed on its Branch. PNB was advised to submit its reply, if any, within 15 days of the receipt of the show cause notice failing which it would be presumed that it has no explanation to offer. PNB was also asked to intimate along with the reply whether it desires a personal hearing. PNB vide letter dated 25.06.2003 replied to the show cause notice dated 28.04.2003. PNB made the following submissions:
 - 5.1 They stated that the stock invests issued by the branch on 8.6.94 were not meant for the public issue of MCL. The said stock invests were issued blank i.e. without mentioning the name of the public issue, for which disciplinary action was taken against the erring officials. They stated that as the issue of stock invest and payment of stock invest were dealt with at different department / officers, the error could not be detected at that time.
 - 5.2 They stated that the company with the connivance of the investor misused the blank stock invests in MCL public issue and the branch / bank was not aware of this.
 - 5.3 They further submitted that the name of the applicants and Sr. No. of application forms appearing on the 22 stock invests presented were entirely different from the names and application form Nos. appearing in the Master list (stock invests) supplied to the stock exchange for finalizing the basis of allotment. They contended it to be evident from the statement that the Registrar to the issue had submitted list of stock invests to stock exchange for allotment are different than those

presented to the Bank for realization. Therefore, a detailed investigation is required to scrutinize the record of stock exchange to determine how the stock invests were misutilised by the Registrar / Company.

- 5.4 They contended that they had collected only 77 applications with stock invests which included 2 applications of NRIs and not 155 applications as stated in the report. Therefore, they stated that the Branch did not accept the applications after the closure of the public issue of MCL and did not violate the guidelines (Clause 6b) of the Code of Conduct specified in Schedule III in terms of Regulation 16 of the SEBI Regulations.
- 5.5 With regard to the acceptance of one application for 5 lac share amounting to Rs.25,00,000 along with the Ch. NO.088341 dated 7.4.94 PNB submitted that the same was accepted within the issue period. They stated that the account was opened on 30.3.94 in normal course of business after ensuring that all the formalities for opening of the account have been complied with. They contended that the operations in the account were the discretion of the account holder and that the Bank had no role to play in this regard.
- 5.6 They submitted that the cheque No.088341 alongwith the application was accepted by them during opening of public issue and due to heavy rush of public issue work at the relevant period of time (14 other public issue with total collection of Rs.2227.72 lacs approximately were under process at the branch) through oversight the said application and the cheque was sent to the computer agency. However, subsequently while processing the application, the computer agency, detected the mistake that it was a transfer cheque of the branch itself and not a clearing cheque, and returned the cheque to the branch and the same was debited to Superior Chemicals Ltd. (SCL) account on 10.5.94. They stated that there was sufficient credit balance in the account of SCL's and its sister concerns subsequent to the said cheque dated 7.4.94.
- 5.7 With regard to allegation that cheque No.088341 was pre dated with a view to filling in the gap in subscription, they clarified that as far as drawal of Cheque by an account holder is concerned, a Banker cannot have access or control over such matter and further that the drawal pattern of cheques is the prerogative of an a/c holder and the Banker has only to honour such cheques as and when presented.
- 5.8 They contended that it was the practice of the Registrar to the Issue (i.e. Nipar Financial Services Pvt. Ltd in the public issue of MCL) to send its representative to the branch daily for collection of applications etc. and that the branch in fact had received 7 applications for Rs.17,500/- from PNB's branch Nichhi Baug, Varanasi vide their schedule dated 31.5.94. They stated that since the basis of allotment was to be finalized on 9.6.94 and the office of Registrar to the issue was situated at Baroda and not having an office at Ahmedabad, the Company vide their letter dated 9.6.94 made a request to handover the stock invests and applications to its representative so that the same could be handed over to the Registrar prior to finalization of basis of allotment.

They stated that after verifying the veracity of the contents of the letter, the applications were handed over to the representative of the company who in turn handed over the same to the Registrar at Baroda on 9.6.94, as the basis of allotment was to be finalized on 9.6.94. They contended that since the stock invests were handed over to the company on 9.6.94 and the basis of allotment was finalized on 9.6.94, there was no possibility of the same being misutilised by the company.

PNB sought personal hearing while submitting as above.

6. An opportunity of personal hearing was given on 21.7.2003. Shri S K Mohanty, Chief IBD & MBD, Shri Vasudevan, Sr. Manager, ZO, Gujarat & V P Goswami Sr. Mngr. Br. Shahibaug representing PNB attended the hearing and made submissions. Shri S K Mohanty, Chief IBD & MBD stated that they would send their written submissions within 48 hrs. PNB vide letter dated 23.7.2003 while reiterating their earlier submissions made, inter-alia, the following submissions:

6.1 They stated that the Branch did not accept the share applications of MCL after the closure of the issue with stock invests dated 8.6.94 because, if the issue had already closed on 7.4.94 and was fully subscribed, there seems no reason in issuing stock invests for the same closed issue by the same branch.

6.2 They however admitted that the blank stock-invests were issued by their branch on 8.6.94 without mentioning the name of the company and the erring officials responsible for this were punished by downgrading one scale of pay of the Senior Manager and censuring two officers with remarks in their personal files. They contended that it was the MCL which, with the connivance of some investor misused the blank stock-invests for its public issue.

6.3 They contended that the Bank is having a systematic set of guidelines for the branches to follow in respect of handling Bankers to the Issue assignments, and that these guidelines are issued through various circulars to the branches.

6.4 They stated further that in the instant case PNB had already punished the erring official and also removed the branch from the list of authorized branches to undertake the 'Banker's to Issue' assignment.

7. I have carefully examined the facts and circumstances of the case. I have also carefully considered the Enquiry Report and the submissions made by PNB before me and vide letters dated 25.06.2003 & 23.07.2003. On appreciating the facts and circumstances of the case the findings are as under:
8. I find that the minimum subscription in the public issue of Maha Chemicals Ltd. was completed by bringing late applications to the extent of 33% of the issue out of which stock invests used for subscription to the issue, amounting to 17% of the issue, were issued much after the closure of the issue. The issue, therefore, did not receive the minimum subscription but shown to have been successfully subscribed by indulging in above irregularities. Nevertheless shares were allotted in violation of SEBI DIP Guidelines and the provisions of the Companies Act. In this regard, the charge against the PNB is that while acting as the Bankers to the issue in the public issue of Maha Chemicals, it violated the code of conduct laid down in the Regulations by accepting applications after the closure of the issue. The following facts and circumstances bring out the findings:
- 8.1 From the final certificate provided by all bankers to the issue, it is observed that there were about 156 applications accompanied by stock invests for an amount of Rs.54.76 lakhs including applications by NRIs.
- 8.2 The cumulative amount of stock invest applications collected by all other bankers to the issue (excepting PNB) amounted to only Rs.2.30 lakhs against 79 applications, whereas the collection of PNB amounted to 77 stockinvest applications for an amount of Rs.52.46 lakhs.
- 8.3 Only State Bank of Travancore (SBT) and PNB had given final certificate of collection after the stockinvest date.
- 8.4 SBT has collected just one (1) application for Rs.2,500/- accompanied by a stock invest. Hence, the possibility of the said bank having collected any of the large value applications with stock invests which were dated after the closure date of the issue is ruled out.
- 8.5 PNB alone has collected substantial amount of applications amounting to Rs.52.46 lakhs of which 24 stock invest applications for an amount of Rs.50 lakhs is collected at Shahibaugh branch.
- 8.6 The branch itself had issued 22 stock invests for Rs.9000 each for the public issue of MCL on 08.06.94 when, as a Banker to the Issue, it knew very well that the issue had closed as far back as 7th April, 1994.
- 8.7 The rough working sheet of PNB Shahibaugh branch as of May 20, 1994 show nil stock invest applications whereas the branch-wise collection as per the final certificate show 24 stock invest applications for Rs.50 lakhs at Shahibagh branch.
- 8.8 There is a letter dated 09.06.94 from MCL addressed to PNB, Shahibagh branch requesting the branch to hand over the stock invests along with original application forms to bearer.
9. I find that PNB collected 77 stock invest applications, out of which the Branch had collected 24 applications. The Branch itself had issued 22 stock invests. The said 22 stock invests were issued on 8.6.94 even though as a banker to the issue of Maha Chemicals Ltd., PNB knew that the said issue was closed on 7.4.94. PNB has not denied that the Branch had issued the said 22 stock invests. However, it submitted that these stock invests were not issued for the public issue of Maha Chemicals Ltd. After the issuance of 22 stock invests, same were appended to the application forms of Maha Chemicals Ltd. in different names. It argued that the names of the applicant and serial numbers of the application forms appearing on the 22 stock invest presented are entirely different than names and application form numbers appearing in the master list (stock invest) supplied to the stock exchange for finalizing the basis of allotment. In support of the same PNB has submitted copies of stock invests and list of 155 applications.
10. Vide letter dated 23.7.2003, PNB has submitted that *"The Branch did not accept the share applications of MCL after the closure of the issue with stock invests dated 8.6.94 because, if the issue had already closed on 7.4.94 and was fully subscribed, there seems no reason in issuing stock invests for the same closed issue by the same branch. However, we accept that the blank stock-invests were issued by our branch on 8.6.94 without mentioning the name of the company. For this the erring officials were punished by downgrading one scale of pay of the Senior Manager and censuring of the two officers with remarks in their personal files. It is the MCL which with the connivance of some investor has misused the blank stock-invests for its public issue"*. PNB therefore, admitted that it has issued the stock invests without mentioning the name of the issue. It is also clear from the copies of the stock invests that they are used to subscribe to the public issue of MCL. Though, PNB had stated that the application nos. quoted in the stock invests and application nos. appearing in the master list are different, it could not substantiate the same by furnishing the name of the issue / issues for which the said 22 stock invests were issued. It has also not furnished the details of the 22 stock invests issued by it for the public issue of MCL. However, it has stated that "as the issue was fully subscribed, the Branch did not issue the stock invest for subscribing to MCL." At the same time, it has not furnished the details of 22 stock invest received by it as a collecting banker in the public issue of MCL. In view of this, I find that PNB had accepted the applications after the closure of the public issue of Maha Chemicals Ltd., thereby it has violated clause 6 (b) of the Code of Conduct specified in Schedule III in terms of Regulation 16 of the Regulations.

Clause 6 (b) of the Code of Conduct:

A banker to an issue shall not -

(a).....

(b) accept applications after office hours or after the date of closure of the issue or on bank holidays.

11. I also find that PNB had accepted after the closure of the issue one application for 5,00,000 shares amounting to 16% the issue size accompanied by cheque. The following facts support the above.

11.1 The bank account from which the stock invests were issued was opened only on 30.03.94 i.e. just before the public issue.

11.2 The account had no operations till 7.4.1994, the date of closure of MCL issue and had nil or negligible balance and was funded every time just before clearance of cheques issued.

11.3 Cheque no. 088341 used for subscribing to the issue was cleared only on 10.05.1994 i.e. more than a month after the closure of the issue against credits received on or around that date.

11.4 Cheque no. 088341 found to have been predated with a view to filling in the gap in subscription.

11.5 The master list submitted by PNB in respect of applications accompanied by cheques shows a collection of Rs.285000/- only as on 19.4.94 and the application of SCL was found to be added by hand subsequently.

11.6 The cheque was presented for payment only on 10.05.94 i.e. over a month after the closure of the issue.

Details of cheques issued by SCL and debited to their account are as under:

Cheque No.	Party's Name	Date	Amount	Date of debit
088326	Maha Chemicals Ltd.	07.04.94	1000000	07.04.94
088327	Maha Chemicals Ltd.	09.04.94	4412500	09.04.94
088328	S K Shah	15.04.94	125000	18.04.94
088329	R M Patel	15.04.94	50000	18.04.94
088330	R A Patel	15.04.94	50000	18.04.94
088331	G B Patel	05.04.94	50000	18.04.94
088332	Pay Order	15.04.94	50000	22.04.94
088333	Suraj Enterprises	15.04.94	200000	18.04.94
088334	L B Shah	??	5000	25.04.94
088335	Shyam	25.04.94	500000	26.04.94
088336	Pay Order	??	1000025	27.04.94
088337	Maha Chemicals Ltd.	??	10000	27.04.94
088338	G K Patel	??	50000	28.04.94
088339	Pay Order	29.04.94	500025	29.04.94
088340	Maha Chemicals Ltd.	??	5000	02.05.94
088341	Maha Equity	07.04.94	2500000	10.05.94
088342	G R Patel	12.05.94	200000	13.05.94
088344	P B Shukla	??	100000	02.08.94
088345	Maha Chemicals Ltd.	03.08.94	800000	04.08.94

From the above it can be seen that while cheque no. 088335 is dated 25.4.94 and 088339 is dated 29.4.94, cheque no. 088341 is dated 07.4.94 and 088342 is dated 12.5.94. From the sequence of the dates on the cheques, it can be safely inferred that the cheque no. 088341 was predated.

12. PNB vide letter dated 25.06.2003 submitted that *"the question of accepting the cheque late does not arise as the public issue of Maha Chemicals Ltd. was declared closed on 7.4.94 on account of it being fully subscribed. Further any banker will not have any control as regards sequence of issue of cheques of its customer as the same is prerogative of the customer. We confirm that the said application alongwith the cheque was received by us during the course of the opening of the public issue. During the public issue of MCL the branch was also handling 14 other public issues with a total collection of Rs.2227.72 lakhs That's why the proceeds of the said cheque was deposited in the application money account of the MCL on 10.5.94."*

12.1 The reply of PNB is not convincing since they failed to show any evidence that the said application alongwith the cheque was received by them during the course of the opening of the public issue. Further, their submission that the Branch was handling 14 other public issues cannot be an excuse and it does not absolve them from the charge of violation of code of conduct. I also do not agree with the reply of the Bank that it is the discretion of the account holder to manage the account as he likes.

13. Further, I find that the Branch handed over the original applications alongwith the stock invests to MCL, whereas as per procedure laid down under SEBI (Disclosure and Investor Protection) Guidelines, 2000, they are required to send the applications to the Registrars to the Issue.

Clause 6.5.4.3(c) under Chapter VI (contents of Offer document) of SEBI (Disclosure and Investor Protection) Guidelines, 2000 reads as under:

The following paragraph shall be incorporated at the appropriate places in the Prospectus:

"Registrars to the issue have been authorized by the company (through the resolution of the Board passed on) to sign on behalf of the company to realize the proceeds of the stock invests from the issuing branch or to affix non allotment advice on the instrument or cancel the stock invests of the non allottees or partially successful allottees who have enclosed more than one stock invest. Such cancelled stock invests shall be sent back by the registrars directly to the investors.

- 13.1 The above clause clearly specified that it is the Registrars to the issue who should realize the proceeds of the stockinvests from the issuing bank. Therefore, the act of the branch is not in consonance with the procedure laid down in the said guidelines. Further, by handing over the stockinvests to MCL, it was possible that the stockinvests could be cancelled without realisation.
- 14 In light of the above, I have no hesitation to agree with the findings of the enquiry officer that by accepting applications after closure of issue from persons apparently connected to the promoters and from sister concern of MCL, the bank had enabled the issue to be deemed fully subscribed and get listed, and enabled the promoters to garner a larger chunk of shares in the public issue. PNB's submission that due to an emergent situation which warranted co-operation on the part of the branch for ensuring smooth and timely finalisation of basis of allotment, the applications with stock invests were handed over to MCL, is not tenable. The Bankers to an Issue are entrusted with the job of trust while handling investor's monies. Any deviation from the prescribed procedure can cause irreparable loss to the investors and thereby to the market. I, therefore, find that PNB failed to exercise due diligence and ensure proper care in terms of clause (2) of the Code of Conduct which mandates that "a banker to an issue shall exercise due diligence, ensure proper care."
15. Therefore, in exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992 read with sub-regulation (4) of Regulation 13 of the said Regulations, I hereby debar Punjab National Bank, Shahibaug, Ahmedabad Branch from carrying out the activities as a Banker to an Issue for a period of two months. This order shall come into force after 3 weeks from the date of the order.

Date : 10th Sep. 2003

Place : MUMBAI

A. K. BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA