

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER UNDER SECTION 11B READ WITH SECTION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST SHRI KISHAN GOPAL SOMANI IN THE MATTER OF M/S SAATAL KATTHA AND CHEMICALS LIMITED.****BACKGROUND**

1. M/s Saatal Kattha and Chemicals Ltd (hereinafter referred to as "SKCL") having office at 42, Jaora Compound, M.Y Hospital Road, Indore – 452 001, came out with a public issue of 21,50,000 equity shares of Rs. 20/- each aggregating to Rs. 430,00,000. The public issue opened for public subscription on 30.1.95 and closed for subscription on 2.2.95. Central bank of India acted as a pre-issue lead manager and Rajashree Fiscal Services Ltd acted as the post issue Lead Manager.

2. SEBI received anonymous complaints alleging that the company has fraudulently changed the NRI subscription from competitive basis to firm basis in its public issue without the requisite approval of SEBI with a malafide intention to harm the investors. SEBI vide its letter dated July 11, 1997 forwarded a copy of the complaint to the Central Bank of India, Merchant Banking Division (pre-issue Lead Manager) seeking for comments. Central Bank of India vide their letter dated July 29, 1997 furnished their comments. Vide the said letter it contented that it was the pre-issue Lead Manager for the public issue of SKCL which opened for subscription on January 30, 1995 and closed on February 02, 1995. The post issue activities were handled by Rajashree Fiscal Services Ltd. The draft prospectus was submitted to SEBI vide letter no. CO:MBD:MJ:94-95:1972 dated 1.9.94. An acknowledgement card was issued by SEBI vide its letter dated November 02, 1994.

3. As per the draft prospectus submitted to SEBI under the heading capital structure, 4,00,000 equity shares were reserved for preferential allotment to NRI's / OCB's / FII's on competitive basis. RBI's approval letter no. CO:FID(II)4754, 10.02.40 (5136)/94-95 dated 24/10/1994 was also obtained by SKCL. The SKCL appears to have changed the basis of reservation for NRI from "competitive" to "firm" basis in its final prospectus dated November 23, 1994. SKCL appears to have printed separate application forms inviting subscription from NRI's on firm basis. The same was done without the knowledge or approval of the pre-issue lead manager. Further the application form does not contain reference about date of the prospectus, date of opening of issue, application number or the name of the designated bank branch where the applications were to be deposited etc.

4. SKCL opened a current a/c with Central Bank of India, Churchgate Branch and deposited NRI applications along with the remittances from certain NRIs. This a/c was opened on 31.10.1995 i.e one day after the public issue had already opened for subscription. Central Bank of India, Mumbai Main Branch which was also the controlling branch had issued consolidated final certificate on March 20, 1995 on behalf of 28 designated branches. The said certificate did not indicate any collection received from NRI's.

5. SKCL obtained a certificate for Rs. 80,00,000 dated 7.4.1995 from Central Bank of India, Churchgate Branch where NRI applications were deposited. This certificate was unauthorisedly used by SKCL to show receipt of subscription from NRIs on firm basis and accordingly, the basis of allotment was approved by the Regional Stock Exchange at Indore on 8.4.1995, despite the fact that Churchgate Branch was not a banker to the issue, as such any certificate issued by the Branch was irrelevant for the purpose of finalizing the basis of allotment. The Central Bank of India, Merchant Banking Division has confirmed that all the NRI applications were in the custody of Central bank of India, Churchgate Branch and hence, it is surprising as to how the Registrar proceeded to finalise various formalities in the absence of these original share applications. Two cheques accompanied with the NRI applications were returned unpaid in clearing. The said fact was brought to the notice of the company that the net amount received aggregated to Rs. 32.94 lacs only. The aforesaid acts have been confirmed by the pre-issue Lead Manager in its letter addressed to SEBI.

NOTICE AND HEARING

6. A show cause notice dated 27.5.2003 was issued to Mr. Kishan Gopal Somani, Director on the Board of the SKCL, asking him to show cause as to why a suitable direction under Section 11B should not be issued against him. However, Shri Kishan Gopal Somani failed to submit any reply to the said show cause notice. In the interest of natural justice, an opportunity of hearing was granted to him on 8.10.2003 in the matter. Shri Kishan Gopal Somani appeared before me and pleaded that he was a chartered accountant by profession and not an Whole Time Director on the Board of SKCL. He also pleaded ignorance of the change of terms of the prospectus vis-à-vis allotment of equity shares to NRIs/OCBs/FIIs from "competitive basis" to "firm basis". He also submitted that he had played no role in the change of terms in the final prospectus, hence, he could not be made responsible for the same.

7. Subsequently, Mr. Kishan Gopal Somani submitted a letter dated 18th October, 2003, inter alia, contending that he had requested the directors of SKCL for the copies of the relevant records, however, he had not received any information in this regard. He further submitted that he was not a promoter / promoter-director of SKCL and he is a Chartered Accountant by profession and had been the President of the Institute of Chartered Accountants of India prior to joining the Board of Directors of SKCL. Mr.Somani also submitted that he was expected to render advice at the meeting of the Board of Directors of SKCL while exercising the collective wisdom and also submitted that he could not have checked, word by word and the sentence after sentence of the prospectus, therefore, he had relied upon the concerned persons which included the promoters / working directors and the company secretary of SKCL. Mr.Somani also submitted that he was not the beneficiary in any manner and he had resigned long back from the Board of Directors of SKCL and requested SEBI to drop the proceedings against him.

FINDINGS AND ORDER

8. On perusal of the material available on record and also taking into account the submissions made by Shri Kishan Gopal Somani vide his letter dated 18th October, 2003, I am convinced that he cannot be made responsible for the change of terms of the prospectus contrary to what had been approved by SEBI vis-à-vis allotment of equity shares to NRIs/OCBs/FIIs. I find merit in the argument that he was not a promoter / promoter - director on the Board of SKCL and, therefore, had played no role in the subsequent change of the terms of the prospectus from competitive basis to firm basis vis-à-vis allotment of equity shares to NRIs / OCBs / FIIs. In view of this, I feel that this case does not warrant issuance of directions under section 11B of the SEBI Act, 1992,

however, Shri Kishan Gopal Somani is hereby advised to be cautious in future in his dealings in the securities market. I order accordingly.

Sd/-

Date : 6th November, 2003

A.K BATRA

Place: Mumbai

MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA