

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/s. ELVIS INDIA LIMITED AND ITS DIRECTORS UNDER SECTION 11B OF THE SEBI ACT, 1992

1. M/s Elvis India Limited (hereinafter referred to as EIL), an Ahmedabad based public limited company, came out with public issue of 65,43,900 equity shares at par aggregating Rs.654.39 lac in the year 1994-95. The issue opened on December 27, 1994. The earliest closing date was December 30, 1994 and the latest closing date was January, 07 1995. The issue was lead managed by M/s Jolly Leasing and Finstock Limited (for brevity's sake referred to as JLFL) who was the pre and post issue lead manager, while the Registrar to the issue was PCS Industries Limited (for brevity's sake referred to as PCS) The issue was over-subscribed by 4.49 times.
2. The Securities and Exchange Board of India (hereinafter referred to as the SEBI) received a reference from the Deputy Director of Income Tax (Investigation), Ahmedabad, relating to several irregularities in the applications accompanied by stock-invests in the issue of EIL. The reference inter alia stated that upon the instructions of EIL, one of the bankers to the issue, Punjab National Bank, (PNB) Navrangpura Branch, Ahmedabad had issued 40 stock-invests of Rs. 5 lacs each, totaling to Rs.2 Crores, two months after the closure of the issue. It was further observed that some officials of the PNB were found to have colluded with EIL and a few investors by issuing blank stock invests (without filing them up) on March 01, 1995 and without putting the banker's stamp as to the date of issue, which were then used for making applications even after the closure of the issue. Forty applications accompanied by these stock invests were used to subscribe in the public issue of EIL, allegedly upon the instructions of EIL. The Income Tax Department also observed that the names of the applicants in respect of these forty stock invests, were different from the purchaser of the stock invests as per the bank records. It was further alleged that some of the stock invests which were used in the public issue of EIL were actually issued for subscription in companies other than EIL. Subsequently, even though, these stocks invests were cancelled on March 15 and 28, 1995, the applications accompanied by these stock invests, which were subsequently cancelled were considered for allotment.
3. It was further contended that the issuing bank in their first statement, given to the controlling branch, dated January 16, 1995 did not include the subscription received through these 40 stock invests that was around Rs.2 Crores in their collection amount and instead showed the receipt of subscription of only Rs.5.69 lakhs. However, in their revised statement on the same date and with the same reference number, the subscription to the tune of Rs.2 Crores received through these ante-dated stock invests was included in the total collection received by PNB (Navrangpura) in the issue of EIL. Thereupon the controlling branch of the PNB, issued the final certificate accordingly and sent the documents to PCS for further action. These late applications, accompanied with the stock invest issued after the closure of the issue i.e. March 01, 1995 was considered by PCS and JLFL for allotment of shares. The basis of allotment was finalized on March 09, 1995 and included applications accompanied by stock invest issued two months after the closure of the issue. PCS had submitted that all the applications and the stock invest had been forwarded to EIL as they had not been authorized to sign and present the stock invests to the banks for realization.
4. On the basis of the findings of the Income Tax Department, SEBI vide its order dated 11 August 1997, ordered an investigation into the irregularities in the public issue of EIL such as manipulation of the subscription in the public issue of EIL as well as the violation of inter-alia the provisions of the SEBI Act 1992, and Rules and Regulations framed there under. In the course of the said investigation, SEBI issued summons under section 11(3) of the SEBI Act, 1992 (hereinafter referred to as the 'Act') to the parties involved in the case viz. PNB, the banker to the issue, PCS, Shri Y. A. Thakkar, the purchaser of the stock invest, and EIL and recorded their submissions. However, the purchaser did not appear before SEBI but instead wrote to SEBI and the Income Tax Department about his dealings.
5. Based on the documentary evidences and statements made by the relevant parties, it was found that EIL together with PNB, PCS and the purchaser of the stock invest had manipulated the subscription in the public issue of EIL by accepting 40 invalid applications with ante-dated stock invests between 1st and 9th March, 1995, which were purchased two months after the closure of the issue and considered for allotment against 8.84 lac shares.
6. In view of the findings of the investigation, SEBI issued a notice dated May 15, 2000 to EIL asking it to show cause as to why suitable directions should not be issued to it under section 11B of the SEBI Act, 1992 and directed them to reply to the said notice within 15 days of the receipt thereof and it was further stated that if it failed to furnish its reply within the said time, it would be presumed that EIL had nothing to say in the matter and thereafter SEBI would be free to take such action as deemed fit. However the notice came back undelivered with the endorsement "closed". Consequently the notice was sent to the Vadodhara stock exchange, the regional stock exchange, to hand it over to EIL.
7. On receipt of the same, EIL, vide their letter dated June 01, 2000 promised to send their reply within 15 days of the receipt of the notice. Thereafter vide its letter dated June 07, 2000 while refuting any involvement in manipulating the subscription in the public issue, EIL inter-alia submitted that as per the prevailing system of allotment of shares, it did not have any control over the issue of stock invest, submission of applications to PNB, sending application forms to PCS by PNB, processing and scrutiny of the applications, finalization of basis of allotment and allotment of shares etc. It was stated that the above mentioned functions were performed by PNB and PCS who were appointed by EIL to carry out their respective functions in term of the authorization granted by SEBI. As such EIL did not exercise control over such intermediaries.
8. EIL further submitted that contrary to the finding that 40 applications dated December 27, 1994 with blank ante-dated stock invest were purchased on March 01, 1995 i.e. two months after the closure of the issue and that 8.84 lacs

shares were allotted against these applications which were deposited with the PNB, Navrangpura Branch, Ahmedabad, the PNB, Mahajan Gali Branch, Vadodara, the controlling branch of the bank had given the final consolidation certificate on February 22, 1995, well before the issue of the stock invest date as stated in the show cause notice. Further although as per the charge of SEBI, the purchaser of the 40 stock invest was stated to be one Mr. Y.A. Thakkar, as per the records submitted by PCS to EIL, the 40 applicants were different persons. While further refuting the statement of Mr. Y.A. Thakkar as regards EIL instructing him to purchase blank stock invest and send the same to them, EIL stated that they had neither instructed any person to purchase blank stock invest nor accept any share application forms along with stock invest/cheque. EIL stated that it was wrongly alleged that PCS sent all the applications with stock invest to EIL which had then allotted shares to applicants who had filed these invalid applications. It was contended that the process of allotment of shares in a public issue could not be carried out in piecemeal basis and the same had been approved by the Vadodara Stock Exchange and JLFL as per the basis of allotment finalized by PCS after scrutiny of the share application forms and PCS had also separately rejected few applications which were defective for which the amounts were duly refunded. EIL stated that the allotment of shares had been done by PCS to these 40 applications and the rejected applications by PCS did not contain the names of the 40 applicants. Consequently PCS did not reject the 40 applications. EIL also denied the statement of Mr Thakkar that EIL had returned these stock invest to him after two weeks i.e. 3rd week of March 1995 with a note that no shares were allotted.

9. EIL stated that they had sent 40 stock invests for Rs.2,21,000 each aggregating to Rs.88.40 lacs to the PNB, Navrangpura Branch, Ahmedabad for speedy realization as the same was drawn from that Branch. It was stated that since the PNB, Mahajan Gali Branch, Baroda had issued its final consolidation certificate dated February 22, 1995, well before the date of the issue of the stock invest, it was clear that the bank had fabricated its records in respect of the issue of stock invest by issuing stock invest in the name of 40 persons, although the same were purchased by a single purchaser. Accordingly, the Bank had accepted the applications in 40 persons and issued their certificate and the Controlling Bank had also issued their certificate. It was clarified that in a similar way, the cancellation of the stock invest records must have also been fabricated by the bank. EIL stated that they did not have any nexus with such malpractices and had always given the information as called for without suppressing any facts.
10. EIL stated that in response to SEBI's letter dated September 15, 1999, it had sent copies of the minutes of all the Board Meetings held during the period 1994-95 and 1995-96. While drawing attention to minutes of the board meeting dated November 16, 1994 wherein the Board authorized PCS to sign the stock invest and send them for realization as per the SEBI rules, EIL stated that although PCS was required to carry out the job of signing and sending them for realization immediately after the allotment, they did not do so till the end of March 1995 i.e. 3 weeks after the finalization of the basis of allotment, and consequently the funds of EIL were blocked. EIL stated that as the stock invest were valid only for 4 months from the date of issue, any further delay in realization of stock invest would have made them invalid upon expiry of its validity period and hence it had requested PCS to hand over the stock invest for realization of the proceeds. EIL stated that despite early action on their part, one such stock invest was returned with the endorsement "out of date". Hence EIL had to approach the allottee for payment of the returned stock invest failing which there would have been more instances of stock invest return cases.
11. On the basis of the above, EIL stated that did not have any access or control over any of the process relating to the allotment of shares, and did not know the alleged purchaser of the 40 stock invest; Mr. Y.A. Thakkar, and hence denied the charge of manipulating the issue and allotment of 8.84 lacs shares to the 40 invalid applications without even receiving consideration for the same in as much as the stock invest were not realized.
12. EIL further stated that as per the allotment process, particularly in case of applications through stock invest, the applications and stock invests are first scrutinized by collecting bankers and then by the RTI and if found correct in all respects, are treated at par with other applications where after the allotment is made. Subsequently the stock invests are sent for realization in proportion to the number of shares allotted. EIL stated that in the present case, since the stock invests had not been realized by the Bank, as they had manipulated their records, and the allotment was made by PCS only after the scrutiny of the valid applications, neither EIL nor its directors could be charged with manipulation or making irregular allotments to the applicants whose applications were accompanied by ante-dated stock invests and hence both EIL and its directors did not violate section 69 of the companies Act, 1956, SEBI guidelines as well as the terms and conditions of the prospectus of the Public Issue. EIL stated that it had never persuaded any investor to purchase blank stock invest, not even during or after the issue and had never accepted stock invest directly and /or indirectly and /or through the RTI and were therefore not involved in the process.
13. EIL reiterated that they had authorized PCS to sign the stock invest and send them for realization. However as PCS was found to be inefficient to handle the same and the validity period of the stock invest was almost expiring, EIL was forced to take up the job of signing and realizing the stock invest from PCS. Hence it was not responsible for the irregularities if any in the public issue viz. receiving the late applications, allotting shares to the invalid applications, denying the right of the genuine investors from being allotted or acting adversely against the interest of investors. Hence, directions under Section 11B of the SEBI Act, 1992 should not be launched against them.
14. On the basis of the above, EIL requested that the proceedings initiated against it be dropped and further requested for a personal hearing. Accordingly Mr Dilip Bhagat appeared on behalf of EIL on July 10, 2000 before the then Chairman SEBI, and made submissions on behalf of EIL. Subsequently additional time was granted to EIL to enable them to make additional submissions, if any. In the meantime, based on the findings in the investigation report, SEBI issued notices to intermediaries associated with the public issue of EIL i.e. JLFL, PNB and PCS for their involvement in the irregularities in the public issue of EIL. Upon the basis of the replies received from JLFL, PNB and PCS, inquiry proceedings were initiated against them and upon the conclusion of the said proceedings, as it was found that the said entities had played an important role in the irregularities in the public issue of EIL, action as recommended was initiated against the said entities.
15. Thereupon, vide letters dated March 27, 2003, separate notices were issued to Dr Prabhakar T. Shah, Shri P.K.Gore, Shri Vithaldas T.Bhagat and Shri Dilip V. Bhagat, Directors of EIL, to show cause as to why directions under section

11B of the SEBI Act, 1992 should not be issued against them for their role in the irregularities in the public issue of EIL and directed them to reply to the said notice within 15 days of the receipt thereof and further indicated that if they failed to furnish their replies within the said time, it would be presumed that they had nothing to say in the matter and that SEBI would be free to take such action as deemed fit. However as the notices sent to Shri Vithaldas T.Bhagat and Shri Dilip V. Bhagat returned undelivered, under cover of letter dated May 29, 2003, the said notices to Shri Vithaldas T.Bhagat and Shri Dilip V. Bhagat were sent to EIL for being forwarded to the said directors. As the notices were returned once again, undelivered, another letter dated June 9, 2003 enclosing the said notices was sent to EIL for onward delivery of the said notices to the two Directors. In the meantime, Dr Prabhakar T. Shah and Shri P.K.Gore responded vide their letters, both dated April 15, 2003. In the said letters, both of which were worded identically, it was inter alia submitted that they had been appointed as professional directors and not a promoter director of EIL as was apparent from the terms of the prospectus issued by EIL at the time of the public issue and that in the said prospectus it was also mentioned that the day to day management of EIL would vest with the Managing Director. They contended that they were no longer directors of the company and there should not be any cause for launching any directions under section 11B of the SEBI Act against them for violations if any by EIL since they were only directors of EIL in the professional capacity. It was also stated that since six years had elapsed from the time of the public issue, and as EIL had already been granted a personal hearing before the then Chairman, no action should be launched against them.

16. Subsequently all the four directors of EIL were directed to appear before me on September 1, 2003. While Dr Prabhakar Shah sent a letter dated August 28, 2003 in which he reiterated the submissions made earlier and stated that he had already resigned as a Director of EIL a long time back and due to his preoccupation he would be unable to attend the personal hearing, none of the other Directors either attended the hearing or sent any letter citing reasons for their failure to attend the hearing.
17. In view of the above, I proceed to pass this order on the basis of the facts and circumstances of the case and the material available on record which includes the facts leading to the investigation, submissions made by EIL and the intermediaries associated with its public issue during the investigation, the findings of the investigation as communicated in the show cause notice dated May 15, 2000 and the submissions made on behalf of EIL and its two directors in reply to the same.
18. On a cumulative analysis of the same, I find the explanation of EIL and its directors to charges leveled against them to be unsatisfactory and not backed up by any convincing evidence. In fact no relevant documents have been sent by EIL along with its reply dated June 7, 2000. I have noted the statement made by Shri Yashwant A. Thakkar, (a partner of an investment firm M/s Rashmikant A. Shroff) made to the Income Tax department and to SEBI, to the effect that he had purchased the stock invests on the request of EIL on March 01, 1995 without filling up the details therein and sent them to EIL and that EIL sent them back stating that no shares were allotted against their name I have noted from the records that Shri Thakkar has claimed that the letters of EIL requesting him to purchase the same and to cancel them, were given to the bank while returning the stock invests for cancellation and hence he was unable to produce any such letter or their copies before the investigating authority. However I have noted that the bank could not find such letters in their custody. While EIL denied these allegations, from the records it is seen that as per the board meeting dated 31st May, 1995, EIL did send these 40 stock invests directly to the issuing branch instead of sending them to the main branch as was done for other stock invests. Further EIL presented SEBI with some letters stated to be written by it to the bank, requesting them for encashing the stock invests. I have noted that these letters were not on the company letterhead and there was no acknowledgement from the bank authority. In fact, upon being questioned in this regard, the bank declined receiving such request from EIL. Even as per the statement of the purchaser, Shri Thakkar, EIL actually sent these stock invests back to him, instead of sending them back to the bank. The same stands confirmed by the bank, that the purchaser had sent these 40 stock invests to the bank for cancellation. Also as per the statement of PCS, the stock invests were sent to EIL on 9th March, 1995, the day of the allotment and thereupon the stock invests were cancelled on March 15, 1995 and March 28, 1995 as per the bank's stock invest register. From the above, it can be inferred that EIL had wrongly informed SEBI as well as its own Board, as regards the cancellation of the stock invests. These stock invests were then used for making applications after the public issue of EIL.
19. As the stock invests were issued on March 01, 1995, and the applications were not bearing banker's stamp, from the records it stands confirmed that the invalid applications along with the 40 stock invests reached PCS between 1st to 9th March, 1995. Further as Shri Thakkar purchased the blank stock invests subsequent to the date of closing of the issue, EIL allotted shares against the 40 applications received after the closure of the Issue, which were received with stock invests aggregating Rs.2.00 crores, (issued after the closure of the issue). Against these applications made after the closure of the issue, EIL allotted 8,84,000 shares to them. There is no dispute that such allotments were done at the cost of genuine applicants who had applied for shares when the issue was open for subscription. Thus, the entire allotment process was irregular, in as much as EIL was involved with PCS in receiving invalid applications with ante-dated stock invests and the same resulted in possibly an over-subscription / allotment of shares to an interested group. Thus there were several irregularities in the basis of allotment in as much as shares were allotted to invalid applications.
20. I have noted the fact that the banker to the issue, PNB, Mahajan Gali Branch and the issuing branch, Navrangpura branch admitted that their officials were involved in the irregularities and the issuance of blank stock invests to the purchaser, and further clarified that necessary steps had been initiated against the officials involved as per their rules and regulations. I have also noted that PCS accepted its negligence as regards not checking the applications and the stock invest diligently due to which, invalid applications had been cleared for consideration for the basis of allotment. Their action was contrary to the practice wherein every registrar to an issue gives an in-house number on the reverse of the stock invest as indicated in the application and thereafter detaches them and keeps them in safe custody. PCS did not follow the said practice and all the invalid applications were cleared for consideration for the basis of allotment. As such, the banker to the issue as well as PCS acting in concert with EIL, allowed 8.84 lacs shares to be allotted to invalid applicants thereby depriving the genuine investors.

21. I have also noted the allegations against EIL to the effect that it did not authorize PCS to sign and present the stock invests to the bank as well as the statements made by EIL to the investigating authorities, to the effect that they had taken over the responsibility of realization of all the stock invests on themselves due to the delay on the part of PCS to complete the realization process after the allotment was over as well. I have also noted that EIL in their subsequent correspondence with SEBI, have stated that they had authorized PCS to sign and present stock invests to the banks. However, no proof of the said authorization was furnished. Thus there is clearly a contradictory stand adopted by EIL and it stands confirmed that an incorrect picture of the situation was given by EIL, since it was unable to give a satisfactory explanation for the delay in sending the 40 stock invests to the bank and also for sending them to the issuing bank instead of the controlling bank, as was done for the other stock invests. The modus operandi clearly indicates the direct involvement of EIL and its directors in the irregularities in the issue process.
22. I have noted the submissions made by Dr Prabhakar T. Shah and Shri P.K.Gore to the effect that as they had been appointed as professional directors and not as promoter directors of EIL, there should not be any cause for launching any directions under section 11B of the SEBI Act against them for violations if any, by EIL. In this context, it may be said that as a general rule, directors are appointed to act in the interests of the company and an important area of their legal responsibility stems from the law of trusts –i.e. a fiduciary relationship with the company. The duties arising from this relationship are well defined viz., to act bona fide and exercise their powers for the benefit of the company, to avoid a conflict of interests and a duty not to restrict but freely and fully, exercise their duties and powers. In addition, the directors also owe a duty of care to the company not to act negligently in the management of its affairs but exercise reasonable care and such skills as might be reasonably be expected of a person of knowledge and experience. Consequently the issue of a specific director not being in charge of and responsible to the company for the conduct of its business would become a question of evidence and depend upon the facts and circumstances of each case. A mere averment that as the day to day management of the company vested with the Managing Director, who was in charge of and responsible to the company for the conduct of its affairs, would not suffice for the said director to escape liability. In the case under consideration, if the argument of the said directors was to be accepted, then they ought to have substantiated their stand. I have noted that time and again, sufficient opportunities to present their case were offered to the said directors. Yet apart from making a bare averment that the day to day management of EIL vested with the Managing Director, who would be a person in charge of and responsible to the company for the conduct of its affairs, and that they were not entrusted with the day to day overall management of the business of EIL, no further contentions were advanced on their behalf. In any case, raising of capital through issue of prospectus and activities connected therewith can not be termed as day to day activity. Further the two directors did not consider it appropriate to either appear before me for the personal hearings or even present any material that enabled them to disclaim their responsibility. In the absence of any satisfactory evidence to indicate that the irregularity in the issue process was committed without their knowledge or that they had exercised due diligence to prevent the commission of such an offence, it would be manifest and can be concluded that Dr Prabhakar Shah and Shri Gore who were on the Board of Directors of EIL, were along with the remaining directors in charge of and responsible for the conduct of the business of EIL.
23. Consequently, on the basis of the above, and in the absence of any adequate evidence to the contrary, all the allegations/charges against EIL and its directors stand sustained and it can be inferred that EIL and its Directors tried to manipulate the issue by making irregular allotments to applicants whose applications, accompanied by ante-dated stock invests, were received after the closure of the Issue, at the cost of genuine applicants **which act was in violation of Section 69 of the Companies Act, 1956, SEBI Guidelines and also the terms and conditions of the Prospectus for the Issue.** The activities of EIL and its directors are detrimental to the prospect of capital markets and also to the interests of the genuine investors.
24. It is to be noted that persons who operate in the market are required to maintain high standards of integrity, promptitude and fairness in the conduct of their business dealings. A company that indulges in manipulative, fraudulent and deceptive transactions, or abets the carrying out of such transactions which are fraudulent and deceptive, should not be allowed to operate in the market.
25. Accordingly, in view of the facts and circumstances of the case and the blatant violations committed by EIL and its directors of the provisions formulated by SEBI for the protection of the investors, I find that a direction restraining EIL and its Directors from operating in the capital market for a period of three years would be required. The passing of such an order would be necessary for the regulation of the persons operating in the capital market and the development thereof as well as the protection of the investors.
26. In view of the above, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992, read with Section 11B of the SEBI Act, 1992, I hereby prohibit EIL from accessing the capital market and buying, selling or dealing in securities for a period of three years and further prohibit the directors of EIL, i.e. Dr Prabhakar T. Shah, Shri P.K.Gore Shri Vithaldas T.Bhagat and Shri Dilip V. Bhagat from buying, selling or dealing in securities for a period of three years.

A.K.BATRA

DATE: JANUARY 28, 2004

WHOLE TIME MEMBER

PLACE: MUMBAI

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