

SECURITIES AND EXCHANGE BOARD OF INDIA

DIRECTION UNDER SECTION 11B READ WITH SECTION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST SIDH GLOBAL EQUITY FUND LTD IN THE MATTER OF BARODA AGRO INDUSTRIES LTD.

BACKGROUND

1. Baroda Agro Industries Ltd (hereinafter referred to as BAIL) made private placement of shares in 1992, and it applied to the Controller of Capital Issues (CCI) for the permission to come out with public issue. In the meantime, CCI was repealed and SEBI was constituted. BAIL made a fresh application to SEBI for coming out with a public issue and approval was granted on 19.11.93. Consequently, BAIL came out with a public issue of 27,00,000 equity shares for Rs. 10/- at par which opened on 17.3.94 and closed on 21.3.94. 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.
2. 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 1992 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.
3. In view of these complaints, an 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 number of shares were notified as belonging to the promoter's 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. It was also observed that BAIL issued an undertaking to the BSE that it 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, such non-transferable shares 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.
4. It was noticed during the course of investigations from the various complaints that BAIL did not inform these investors about the 'lock-in' despite having given assurance to the exchange to that effect. As a result of this, when the 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 auctions at much higher prices to give delivery for their obligations. As the price of the scrip of BAIL was moving upward during the same period, the sellers suffered financial losses. M/s Sidh Global Equity Fund Ltd acted as one of the lead managers to the issue.

SHOW CAUSE NOTICE AND HEARING

5. In view of the above, show cause notice dated February 18, 2003 was issued under Section 11B of SEBI Act, 1992 asking the lead manager M/s Sidh Global Equity Fund Ltd and its directors to show cause as to why suitable directions, including directions for debarring the lead manager and their directors from associating themselves with any of the activities in the capital market for a suitable period, as deemed fit, should not be issued. The said show cause notice had been sent by registered post but the same came back undelivered. Therefore, the said show cause notices have been pasted on the last known address of the entity. An opportunity of hearing was granted to the lead manager on 10.10.2003 in the matter. However, the parties neither appeared before me nor submitted any reply in the matter.

FINDINGS

6. On examination of the material available on record, I find that the lead manager failed to exercise due diligence and care in ascertaining the status of the shares issued under the promoter's quota, mis-reporting the same in the prospectus and have mis-reported about the extent of subscription and the subsequent issue of shares and thus violated the provisions of SEBI (Merchant Bankers) Rules and Regulations, 1992 and also the Circulars issued by SEBI in this regard. 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 the 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 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, the sellers suffered financial losses. Since the merchant banker failed to discharge its duties and also in view of the expiry of Certificate of Registration of the lead manager, I feel that it is a fit case for issue of directions under Section 11B read with Section 11 of SEBI Act, 1992 against the lead manager.
7. In view of the above, in exercise of powers conferred upon me by Section 19 read with Section 11 and 11B of SEBI Act, 1992, I hereby direct that Sidh Global Equity Fund Ltd be debarred from dealing in securities or associating with any of the activities in the capital market for a period of three years. This order shall come into force with immediate effect.

A.K BATRA

MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

DATE : 23rd April, 2004

PLACE : MUMBAI