

SECURITIES AND EXCHANGE BOARD OF INDIA

DIRECTION UNDER SECTION 11B READ WITH SECTION 11 (4) (b) OF SECURITIES AND EXCHANGE BOARD OF INDIA, ACT, 1992 READ WITH REGULATION 11 AND 12 OF SEBI (PROHIBITION OF FRAUDULANT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST MR. DINESH SHAH AND MRS. USHA SHAH IN THE MATTER OF M/S. MAGIC TRADING AND AGENCIES LTD.

BACKGROUND

1. M/s Magic Trading and Agencies Ltd (hereinafter referred to as MTAL) which is listed and traded only on The Stock Exchange, Mumbai (hereinafter referred to as BSE) was incorporated as a Public Limited Company in the year 1981. The main objects of the company as per its Memorandum of Association is to carry on trade, occupation or business as general merchants, concessionaires, exporters, importers etc.,
2. As per the distribution schedules submitted to BSE, the issued capital of the company as on September 30, 1999 was found to be Rs.50,00,000/- divided into 5,00,000 shares of Rs.10/- each. As of 30.09.99, Ms. Monica Patel along with her family members, was holding 1,34,350 shares, which works to around 26.9% of the entire share capital of the company.
3. On the basis of the profit & loss account of MTAL for the year ended March 31, 2000, it was observed that around 80.0% of the total income i.e. Rs.5.46 lakhs came from interest and profit on the sale of investments. By virtue of the same, it appears that the company is mainly an investment company rather than a trading company.
4. Until February 2000, the scrip of the company was not actively traded and was very illiquid. During the years 1998 and 1999, only three trades took place for a total volume of 900 shares.
5. On 17th February, 2000, the first trade was noticed at a price of Rs.28.25 after a gap of nearly 11 months with volumes of about 4,500 shares. The price of the scrip slowly fell down from Rs.28.25 in February 2000 to Rs.9 by the end of August, 2000. Further the scrip never witnessed an upward movement during the period February 2000 to August 2000. The total trading volume noticed during the period 17.02.00 to 05.11.00, was to the extent of 36,650 shares.
6. The Registrar of Companies, (hereinafter referred to as RoC) Chennai in the second week of December, 2000 received several anonymous complaints. Among other things, the complainants alleged that MTAL which was taken over by M/s. QPRO IT Services Pvt. Ltd. (hereinafter referred to as QPRO) was planning to go for a private placement of shares to the tune of Rs.10 crores and that the management of QPRO comprising Mr. Madhusudan Khemka and Ms. Geeta Sundaresh were involved in many criminal cases, FERA violations etc. It was also alleged that the promoters who were trying to create a big market for the shares and off load their shares in the market, had indulged in insider trading by reducing the price and thereby cheating the innocent public. Hence, the ROC, Chennai forwarded these complaints to the southern regional office of the Securities and Exchange Board of India (hereinafter referred to as the SEBI), which in turn forwarded the same to the Head office of SEBI, at Mumbai for further action.
7. Based on the request of SEBI to look into the allegations raised by the complainants, BSE carried out a preliminary investigation and thereafter informed SEBI that MTAL had initiated amalgamation proceedings with another unlisted company namely QPRO under section 395 of the Companies Act, 1956 and had applied for listing of equity shares issued on amalgamation. It was stated that the said scheme of amalgamation did not involve the court procedures and pursuant to the scheme, MTAL had allotted 50,00,000 equity shares of Rs.10/- each to the share holders of QPRO in the ratio of 1:1 with a share holders base of around 269. The Listing Committee, BSE came to the conclusion that the ratio of allotment of shares was not correct and that it was arrived at by hammering the share price on the exchange and therefore the listing application in respect of the additional shares was sought to be rejected.
8. It was further stated that after the investigation carried out by BSE for the time period February, 2000 to November, 2000, it appeared that the price manipulation in the scrip had taken place before convening the Extra-ordinary General Body Meeting of MTAL to obtain the approval for the amalgamation scheme and exchange ratio of shares from the shareholders and that persons relating to the company circle had acted in concert and manipulated the price of the scrip.
9. In view of the same, SEBI undertook preliminary investigations in respect of the case during the month of April, 2001 and collected necessary information from the trading members who traded actively during the above period. After analysis of the information so collected, the Chairman, SEBI, in exercise of his powers under section 4(3) of the SEBI Act, 1992 (hereinafter referred to as the Act) vide an order dated 15th November, 2001, ordered a formal investigation into the affairs relating to the buying, selling or dealing in the shares of MTAL and thereafter submit the report to the Board.
10. Accordingly during the investigation process, the persons connected with the trading in the scrip, including the brokers who had traded in the scrip were questioned by the investigating officer. Upon the conclusion of the said proceedings and after recording the submissions made by all the concerned persons, the investigating officer submitted his report by taking into consideration, the said submissions as well as the facts and the circumstances of the case and the material available on record.
11. In the report, it was inter alia noted that while the trading in the scrip became active from February 17, 2000 onwards, after a period of nearly one year, during the said period two brokers of BSE had primarily contributed towards the exchange volumes i.e. about 96.0% of the total volumes in the scrip. These brokers were JRM Share and Stock Brokers Pvt. Ltd and MJP Share and Stock Brokers Ltd (hereinafter referred to as JRM and MJP respectively) The report further noted that on the basis of the evidence gathered during the investigation, not only were JRM and MJP

found to be acting in concert with each other, but the management of these two broking entities were also related to the erstwhile management of MTAL. These two entities were found to have managed between themselves, four clients namely Ms. Monica Patel, Mr. Dinesh Shah, Mrs. Usha Shah and Mr. Sushil Motishaw who besides being inter related, actively traded in MTAL scrip. These entities were matching orders amongst themselves within seconds.

SHOW CAUSE NOTICE AND HEARING

12. Pursuant to the investigation, a show cause notice dated 22.09.03 was issued to Mr. Dinesh Shah and Mrs. Usha Shah asking them to show cause as to why a suitable direction under Section 11B read with Section 11 (4) (b) of SEBI Act including a direction prohibiting them from dealing in securities for a particular period, should not be issued. It was also mentioned that if they failed to submit any reply within the stipulated period of 21 days then, it would be presumed that they had nothing to say in the matter and SEBI would be free to take such action as deemed fit in the matter. Mr. Dinesh Shah and Mrs. Usha Shah had responded vide their letter dated 10.10.03 asking for information regarding the persons and entities referred to in the show cause notice and their perceived relationship with these entities according to SEBI. SEBI vide its letter dated 25.11.03 had given the clarifications requested and had allowed Mr. Dinesh Shah and Mrs. Usha Shah time till the 2.12.03 to reply to the show cause notice. Mr. Dinesh Shah and Mrs. Usha Shah had requested an extension of time till two weeks after 2.12.03 and had later filed their reply vide letter dated 16.12.03.
13. Thereafter, in the interest of natural justice, SEBI vide its letter dated 29.12.03 granted an opportunity of hearing to Mr. Dinesh Shah and Mrs. Usha Shah before me on 13.01.04. Mr. Dinesh Shah and Mrs. Usha Shah appeared before me and made their submissions. I proceed further based on the material available on record and the oral submissions at the time of hearing.

ISSUES FOR CONSIDERATION AND FINDINGS

14. I observed from the details of the case that Mr. Dinesh Shah and Mrs. Usha Shah, admitted to be husband and wife, were appearing as common clients to both JRM and MJP and appeared as their major clients during the period under consideration. A further analysis of their trading pattern suggests that both of them were buying and selling the shares of the company during the said period and the shares bought and sold by them were either through persons associated with them and/or the entities in which they were interested.
15. The shares of MTAL were constantly circulated in the market among Ms. Monica Patel, Mr. Dinesh Shah, Mrs. Usha Shah and Mr. Sushil Motishaw, resulting in rampant circular trading in the scrip. I gather that by selling the shares and placing the transactions consistently at the lower end of the circuit filter, the share price of MTAL was hammered down.
16. I further noted that Mrs. Usha D. Shah was introduced as a client on April 3, 2000 to MJP as per their client introduction form. However, as per the trading details submitted by the trading members, I came to know that MJP traded on behalf of Mrs. Usha D. Shah in the scrip of the company even in the month of February 2000 i.e., prior to obtaining the client introduction form. In fact the ledger statement of Mrs. Usha D. Shah showed that she was appearing as a client even from the year 1998. It was found that there were no other transactions apart from the deals in the company. This leads me to the conclusion that Mr. Dinesh Shah and Mrs. Usha Shah were registered just to trade in the specific scrip of MTAL and to act as front entities of MJP and JRM.
17. The following table enlists the members through whom Mr. Dinesh Shah and Mrs. Usha Shah have traded:

Name of the TM	Purchases	Sales	Gross	Net
Dinesh B. Shah				
MJP Share & Stock Brokers	4,050	6,700	10,750	-2,650
JRM Share and Stock Brokers	3,000	N.A.	3,000	3,000
Usha D. Shah				
MJP Share & Stock Brokers	4,450	7,800	12,250	-3,350
JRM Share and Stock Brokers	2,000	Nil	2,000	2,000

1. The following instance brings to light the mode of operation of Mr. Dinesh Shah and Mrs. Usha Shah in the shares of MTAL. On 17.02.00, Mrs. Monica Patel sold 4,500 shares through JRM (In Settlement No: 48). As per the stock exchange trading details and information submitted by the Trading Members, these shares were bought by Mrs. Usha D. Shah (2,250 Nos.) and Mr. Dinesh B. Shah (2,250 Nos.) through MJP. The price at which the transactions took place was Rs.28/-. As per the settlement details, it was observed that share certificates bearing the Distinctive Nos. (102551 to 107050) were involved in the settlement obligation. On 07.04.00, Settlement No: 02, JRM bought 4,500 shares in their own trading account. As per the details available, it was observed that on the same day i.e. 07.04.00, Mrs. Usha D. Shah sold 2,500 shares and Mr. Dinesh B. Shah sold 2,000 shares through MJP. The transactions took place at Rs.21/-. Investigations revealed that the same set of Distinctive Nos. i.e. 102551 to 107050 were delivered by Usha D. Shah and Dinesh B. Shah to JRM through the market.
2. During the course of recording his statements before the investigating officer, Mr. Dinesh Shah had, upon being questioned as regards the rationale behind trading in relatively illiquid scrip such as that of MTAL, submitted that he did not remember.

Further I noted from the answers given by Mr. Dinesh Shah that the queries raised by the investigating team were not properly answered and that he did not have any intention to co-operate with the investigation.

3. In his written reply to the show cause notice he had alleged that:

- a. The show cause notice has been issued on conjectures and surmises and the investigation conducted is based on presumptions and not relied on any concrete documentary evidence.
 - b. The dealings in the shares of MTAL were in the ordinary course of business and there were no artificial orders, cancelled or modified to create an impression of false market depth.
 - c. The transactions carried out by Mr. Dinesh Shah and Mrs. Usha Shah are independent of each other with requisite documentation with the broker and no relation exists between the transactions carried out by them.
 - d. Mr. Dinesh Shah and Mrs. Usha Shah did not know Ms. Monica Patel who was indicated as a counter party to their transactions according to the clarifications sent by SEBI. They had dealt with the brokers namely JRM and MJP only.
 - e. Mr. Dinesh Shah and Mrs. Usha Shah did not have any relationship with any of the brokers or MTAL and there was not any remote communication either directly or indirectly with the management of MTAL or QPRO or the brokers JRM and MJP.
 - f. The dealings in the shares by Mr. Dinesh Shah and Mrs. Usha Shah during the period February to April, 2000 cannot be linked to the fall in the price of the shares of MTAL below Rs.19.40/- after April to Rs.9.00/- during August, 2000 and they have not been involved in any act of hammering the price of MTAL shares.
1. The above submissions of Mr. Dinesh and Mrs. Usha Shah cannot be accepted because their trading pattern as explained in Para 18 is a clear indication of the fact that they have dealt in the shares of MTAL with an intent to manipulate the prices and to hammer it down to the levels desired by the management of the company.
 2. The dealings in the account of Mrs. Usha Shah even before the date according to the client introduction form with the broker as referred to in Para 16 goes to prove the fact that, Mr. Dinesh Shah and Mrs. Usha Shah have been acting in concert with the brokers MJP and JRM to manipulate the prices of MTAL's shares. Also, they had been enrolled as clients only to deal in the shares of MTAL.
 3. From the above, I conclude that Mr. Dinesh Shah and Mrs. Usha Shah have played a major role in the price manipulation of MTAL's scrips. They have aided and abetted the price manipulation of the MTAL's scrip and are guilty of violating the provisions of Regulation 4 (a), (b) (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 which read as under :

"4. No person shall –

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person ;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market ;

(c) indulge in any act, which results in reflection of prices of securities based on transactions that are not genuine trade transactions ;

(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the market price of securities;

(e).....

4. I note that Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 reads as under :-

"Repeal and savings

13. (1) The Securities and Exchange Board of India ((Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 is hereby repealed.

(2) Notwithstanding repeal of the Securities and Exchange Board of India ((Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations."

5. I find that Mr. Dinesh Shah and Mrs. Usha Shah are responsible for creating false and misleading appearance of trading and manipulation in the scrip of M/s. Magic Trading and Agencies Ltd. Innocent investors would be induced to trade by such false appearance of trading in the securities market, unless these unscrupulous activities are

prevented/contained in the securities market. In view of my findings mentioned hereinabove, I find that it is a fit case for issue of directions against Mr. Dinesh Shah and Mrs. Usha Shah whose conduct has been detrimental to the interest of investors and the securities market.

6. Therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 4 (a), (b) (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby direct that Mr. Dinesh Shah and Mrs. Usha Shah be:

a. restrained from associating with any corporate body in accessing the securities market and

b. prohibited from buying, selling or dealing in securities, directly or indirectly,

for a period of one year. This direction shall come into force with immediate effect.

DATE : May 06, 2004

PLACE : Mumbai

A.K BATRA

MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA