

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. SUSHIL J. MOTISHAW 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 reach 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. Sushil J. Motishaw asking him 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 him from dealing in securities for a particular period, should not be issued. It was also mentioned that if he failed to submit any reply within the stipulated period of 21 days then, it would be presumed that he had nothing to say in the matter and SEBI would be free to take such action as deemed fit in the matter. Mr. Sushil Motishaw vide his letters dated 16.10.03 and 19.11.03 requested SEBI for additional time for filing his reply citing health reasons and providing details of his ailments. SEBI vide its letters dated 13.11.03 and 29.12.03 acceded to the request of Mr. Sushil Motishaw and advised him to submit his reply by 02.01.04 failing which, it would be presumed that he had nothing to say in the matter and SEBI would be free to take such action as deemed fit.
13. In the interest of natural justice, SEBI vide its letter dated 29.12.03 referred to above granted an opportunity of hearing to Mr. Sushil Motishaw before me on 13.01.04. However, the said date of hearing was rescheduled for 04.02.04 at the request of Mr. Sushil Motishaw. I proceed further based on the material available on record and the submissions made by Mr. Sushil Motishaw during the hearing before me.

ISSUES FOR CONSIDERATION AND FINDINGS

14. I observed from the investigation report that out of the four clients referred to in Para 10, Mr. Sushil Motishaw was appearing as a common client to both JRM and MJP and was a net buyer of the shares of MTAL. Although Mr. Sushil Motishaw placed both buy and sell orders, he took maximum deliveries in the market during the period under consideration. In fact when Ms. Monica Patel was selling, he was mainly buying the shares during the period under consideration.
15. The following table enlists the members through whom Mr. Sushil Motishaw had traded:

Name of the TM	Purchases	Sales	Gross	Net
MJP Share & Stock Brokers	6,000	100	6,100	-5,900
JRM Share and Stock Brokers	7,500	Nil	7,500	-7,500

1. I gathered that Mr. Sushil Motishaw had given the following submissions during the investigation:
 - a. Upon being questioned as regards the matching of transactions within a few seconds, Mr. Sushil Motishaw submitted that he did not have any prior information in relation to the counter party and, he had just dealt in the scrip on the basis of the advice given by MJP for long term investment purposes and not on the basis of any prior information relating to the merger of MTAL and QPRO.
 - b. He further stated that as both MJP and JRM are located in the same premises, the orders were put to MJP to buy/sell a particular scrip and accordingly, the dealer executed the orders at his convenience either with MJP or with JRM.
1. I observed from the records that the deliveries given by Mrs. Monica Patel were absorbed by Mr. Sushil Motishaw almost in its totality. During the investigation process, upon examining the copies of the certificates furnished by him, it was noted that these shares so absorbed were sent by him to be transferred in his name.
2. Despite the fact that Mr. Sushil Motishaw did not attend the general meeting of MTAL in which the merger ratio was decided, the decision to enlist the services of MJP and JRM and their advice to trade in an illiquid scrip such as that of MTAL especially when the prices of the shares were being hammered down, could not be accepted to be for genuine investment purposes. On the contrary, these circumstances lead me to the conclusion that the reason to purchase the shares was on account of factors other than a sound investment decision and were intended to manipulate the price of the scrip of the company.
3. The same is corroborated by the trading patterns, wherein the transactions entered by Mr. Sushil Motishaw in the scrip of MTAL have been found to be manipulative in nature and obviously entered into with an intention to hammer the price of the scrip during the period under consideration in as much as the volumes contributed by him, constituted a substantial part in the entire volumes of the trades executed during the period under consideration and the trades executed by him significantly contributed to the price fall in the scrip at the exchange.
4. Therefore, I am convinced that, Mr. Sushil Motishaw played a major role in the manipulation of the price of MTAL's shares. The fact that he was appearing as a major buyer during the period under consideration further corroborates this conclusion. He has aided and abetted the price manipulation of the MTAL's scrip and is 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).....

5. 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."

6. I find that Mr. Sushil Motishaw is responsible for creating false and misleading appearance of trading and artificial price 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. Sushil Motishaw whose conduct is detrimental to the interest of investors and the securities market.
7. 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. Sushil Motishaw 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.

A. K. Batra

Place: Mumbai

Member

Date : May 06, 2004

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