

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

ORDER UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST SINDHU CORPORATE SERVICES PVT. LTD.

CO/04/MRD/06/2004

- 1.0 M/s Sankhya Infotech Ltd. (hereinafter referred to as "the company") with its registered office at Bhubaneshwar and administrative office in Hyderabad made a public issue of 16,70,000 equity shares of Rs. 10 each aggregating Rs. 167 lacs on March 23, 2000. The issue closed for subscription on March 27, 2000. The issue was over-subscribed by 283.50 times. The securities of the company were listed on the Bhubaneshwar Stock Exchange (regional stock exchange) and Hyderabad Stock Exchange.
- 1.1 Sindhu Corporate Services Pvt. Ltd., a category I registrar to the issue and share transfer agent, holding SEBI Registration No. INR 000001732, (hereinafter referred to as "the Registrar") acted as Registrar to the Issue and Share Transfer Agent in the public issue of M/s Sankhya Infotech Ltd.
- 1.2 The company alleged certain irregularities on the part of the Registrar while handling their public issue. An inspection of the books and records of the Registrar was ordered vide Chairman's order dated 06/02/2001 with specific reference to its role in the alleged irregularities while handling the public issue of the company. The inspection report was forwarded to the Registrar. The Registrar replied vide its letter dated 18.05.2001. On receiving reply from the Registrar, the Chairman, SEBI appointed an enquiry officer vide order dated 04.07.01
- 2.0 The enquiry officer submitted his report on 14.11.03 and it was found in the enquiry that the Registrar was guilty of the following irregularities thereby violating the SEBI (Registrars to an issue and Share Transfer Agents) Regulations, 1993 and has come to the following findings:
 - 2.1 That the Registrar did not have the adequate infrastructure to discharge as Registrars.
 - 2.2 There were errors in printing of discharge orders thereby excess refund was made.
 - 2.3 There were errors in printing of share certificates.
 - 2.4 There was Loss/Misplacement of share certificates/refund orders.

- 2.5 There were differences between date of dispatch as certified by the Registrars and actual date of dispatch of share certificates.
- 2.6 Shifting of records of the public issue to the corporate office of the company.
- 2.7 Reprint and issue of share certificates in lieu of demat credits, owing to rejection by NSDL on account of error in beneficiary account details.

The Enquiry Officer recommended suspension of certificate of registration of the Registrar for a period of 3 months.

3.0 A show cause notice dated 10.12.03, in terms of regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said regulations'), was issued to the Registrar to show cause as to why the penalty as recommended by the enquiry officer should not be imposed on it. The Registrar was advised to submit its reply, if any, within 15 days of the receipt of the show cause notice. The Registrar was also asked to intimate along with the reply whether it desired a personal hearing. The Registrar vide its letter dated 26.12.03, accepted all the findings of the enquiry officer and has further stated as under:

- 3.1 With regard to the charge that the Registrar did not have the adequate infrastructure to discharge its functions as Registrar, it was submitted that hiring of temporary staff and outside data services bureau is an accepted mode of operation in the industry, especially in case of IPOs as the quantum and inflow of applications are totally erratic and unpredictable.
- 3.2 The Registrar reiterated that the circumstances and the manner under which it was made to part with the custody of the IPO records and documents to the company, viz, on the pretext of a so-called SEBI inspection. The Registrar submitted that thereafter, since the company did not return any records and, on the other hand, is believed to have accepted the above fact before SEBI, separately, it submitted that its inability to produce the relevant documents was justified.
- 3.3 It was submitted by the Registrar that the violations occurred due to the force of circumstances and the manipulations of the issuer company/ its management and that it had no malafide intents at any point of time. It further submitted that the enquiry officer had not recorded any such findings in his report.

- 3.4 The Registrar stated that the enquiry officer recommended the penalty of suspension of their certificate of registration for a period of three months and that the findings of the enquiry officer were limited to the work related to IPO- there is no adverse observations with regard to its functioning as Securities Transfer Agents, however the proposed penalty also seeks to suspend its STA work, which had not been found to be wanting in any respect, it was further requested that any penalty imposed by SEBI should not inadvertently penalize this branch of its work where no irregularities has been recorded.
- 3.5 It was submitted by the Registrar that its work comprises of continuous service to the client corporates and their investors, in such circumstances, a suspension of work for a limited period of time may not be practical to implement as the same will involve shifting of work to another Registrar for the specified duration of penalty and at the end of the penalty period, once again the work and accounts will need to be shifted back- if the clients agree to the same. The Registrar argued that on the other hand if the clients do not agree to shifting back of the accounts, it will lead to a permanent closure of its STA business, which is not the intention of the penalty recommended by the enquiry officer.
- 3.6 It was further submitted that the imposition of the penalty of suspension of STA work, even for a limited duration, may inadvertently result in much more harsher consequences and thus the Registrar requested that due care may be taken to avoid the same.

The Registrar further confirmed that it does not desire to have any personal hearings.

- 4.0 I have carefully examined the facts and circumstances of the case. I have also carefully considered the Enquiry Report and the submissions of the Registrar vide its letter dated 26.12.03. The following issues will emerge for consideration:

4.1 *Whether the Registrar had the adequate infrastructure, to discharge as Registrar?*

- 4.1.1 I find that the Registrar did not have the adequate infrastructure to discharge as Registrar, in reply to the show cause notice issued to the Registrar, it was submitted that hiring of temporary staff and outside data services bureau is an accepted mode of operation in this industry, especially in case of IPOs as the quantum and inflow of applications is totally erratic and unpredictable. The

Registrar's reply in this regard is not satisfactory as the Registrar hired temporary staff and outside data service bureau, this outsourcing itself indicates that the registrar was not having adequate infrastructure to discharge as Registrar, thus I agree with the findings of the enquiry officer and hold the Registrar guilty of the above charge.

4.2 *Whether there were errors in printing of discharge orders and thereby any extra refund?*

4.2.1 Error in printing of discharge orders thereby excess refund was made. I find that the Registrar has specifically accepted the findings of the enquiry officer; I hold it guilty for the errors in printing of discharge orders and for excess refund.

4.3 *Whether there were errors in printing of share certificates?*

4.3.1 There were errors in printing of share certificates and the Registrar has in reply to the show cause notice accepted the charge. From the enquiry report, I find that the Registrar has violated SEBI's circular no. RRTI Circular No. 1 (93-94) dated November 5, 1993 which provides that, "The Registrars should ensure that such an agreement provides for retention of issue records at least for a period of six months from the last date of despatch of letters of allotment / share certificates/refund orders to enable the investors to approach the Registrar for redressal of their complaints." Also, the registrar has failed to abide by Clause 6 (b) of Code of Conduct as provided in Schedule III read with Regulation 13 of SEBI (Registrar to an Issue and Share Transfer Agent) Regulations, 1993 which provides as under:

6. A registrar to issue and share transfer agent shall endeavour to ensure that-

(a)

(b) Adequate steps are taken for proper allotment of securities and refund of application monies without delay as per the law.

Hence I agree with the findings of the enquiry officer and hold the Registrar guilty of the charge for errors in printing of share certificates.

4.4 Whether there was loss/ misplacement of share certificates/ refund orders?

- 4.4.1 From the enquiry report it is observed that there was misplacement of share certificates/refund orders and the Registrar has in reply to the show cause notice accepted the charge. The registrar has violated SEBI's circular no. RRTI Circular No. 1 (93-94) dated November 5, 1993 which provides that, "The Registrars should ensure that such an agreement provides for retention of issue records at least for a period of six months from the last date of despatch of letters of allotment / share certificates/refund orders to enable the investors to approach the Registrar for redressal of their complaints." Therefore I agree with the enquiry officer's findings on this charge and hold the Registrar guilty of the same.

4.5 Whether there was difference between the date of dispatch as certified by the Registrar and the actual date of dispatch

- 4.5.1 I find that there was difference between date of dispatch as certified by the Registrar and actual date of dispatch. Clause 4 (A) of SEBI (Instructions to Registrars to an Issue) reads as under:

"In addition to other responsibilities accepted and agreed to by a Registrar to an Issue with the issuer, the RTI shall only carry out and be responsible for the following activities in connection with an issue:

- (i) Despatch of allotment advice/share debenture certificates/letters of allotment /refund orders/canceled stock invests. It is clarified that the RTI shall not handover these to the company or any other person for dispatch."

It is observed that the Registrar has acted in utter disregard to Clause 4 (A) of the mandatory instructions of SEBI which are extracted above.

In the reply to the show cause notice issued to the Registrar, the Registrar has accepted the above charge. I therefore agree with the findings of the enquiry officer and hold the Registrar guilty of the above charge.

4.6 Whether the Registrar shifted the operations to the corporate office of the company?

4.6.1 I find that the Registrar shifted the operations to the corporate office of the company and the Registrar has in reply to the show cause notice accepted the charge. As per sub-para (iii) and (iv) of point 5 the circular no.1(94-95) dated October 11, 1994 issued by SEBI, all Registrars are directed not to handover applications and other documents / records pertaining to an issue to the issuer until completion of dispatch of allotment letters/share certificates/refund orders and cancelled stock invest. Further, Registrars are directed vide the abovementioned circular not to handover the records to the issuer and they should only make dispatches to the investors directly. Hence, I observe that the act of the Registrar is clearly in violation of the aforesaid circular issued by SEBI and very serious in nature. Hence, the registrar has violated SEBI's circular no. RRTI Circular No. 1 (93-94) dated November 5, 1993 which provides that, "The Registrars should ensure that such an agreement provides for retention of issue records at least for a period of six months from the last date of despatch of letters of allotment / share certificates/refund orders to enable the investors to approach the Registrar for redressal of their complaints."

4.7 *Whether the Registrar reprinted and issued share certificates in lieu of Demat credits owing to rejection by NSDL on account of error?*

4.7.1 I find that the Registrar reprinted and issued share certificates in lieu of demat credits, owing to rejection by NSDL on account of error and the Registrar has in reply to the show cause notice accepted the charge. The registrar has failed to abide by Clause 2 of Code of Conduct as provided in Schedule III read with Regulation 13 of SEBI (Registrar to an Issue and Share Transfer Agent) Regulations, 1993 by not acting with due skill, diligence and care in the conduct of all their activities. I therefore agree with the findings of the enquiry officer and hold the Registrar guilty of the above charge.

5.0 I have no hesitation to agree with the findings of the enquiry officer that the Registrar is guilty of irregularities as specified in the enquiry report, while handling their public issue thereby violating the SEBI (Registrars to an issue and Share Transfer Agents) Regulations, 1993.

6.0 I find that the Registrar is guilty of several irregularities while handling the public issue of the company thereby has violated SEBI (Registrars to an issue and Share Transfer Agents) Regulations, 1993. I am satisfied that this is a fit case to impose the minor penalty for suspending the registration of the Registrar and the Share Transfer Agent for a period of 3 months as recommended by the Enquiry Officer. Therefore, in

exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992 read with sub-regulation (4) of Regulation 13 of the said Regulations, I hereby suspend the certificate of registration of Sindhu Corporate Services Pvt. Ltd. for a period of three months.

This order shall come into force on expiry of 3 weeks from the date of this order.

Place: Mumbai

Date: 18.06.04

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA