

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(4)(b) READ WITH SECTION 11 AND SECTION 11B OF SECURITIES AND EXCHANGE BOARD OF INDIA, ACT, 1992, READ WITH REGULATIONS 11 AND 13 OF SEBI (PROHIBITION OF FRAUDULANT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003. AGAINST SAWACA BUSINESS MACHINES LTD.

BACKGROUND

1. An investigation was conducted by SEBI, pursuant to Chairman's order dated October 22, 2001, in order to find out whether there was any manipulation in the scrip of Sawaca Business Machines Limited (formerly Sawaca Finance Ltd.), in view of the observation that the scrip, which was illiquid prior to October, 1999, had gone up from Rs. 6.80 on October 26, 1999 to a high of Rs. 38.75 on December 30, 1999.

2. M/s. Sawaca Business Machines Limited (hereinafter to as "the company") came out with a public issue of 30,00,000 shares in March, 1996. The shares of the company are listed for trading on The Stock Exchange, Mumbai and Ahmedabad Stock Exchange. The company was promoted by Shri Satish R. Shah and Smt. Shetal S. Shah, who were also the Directors of the company.

3. As per the information furnished by the company vide its letter dated March 14, 2001, the following persons were falling within the definition of Directors/friends and relatives as per Section 6 of the companies Act, 1956.

1. Satish R Shah
2. Shetal S Shah
3. Vishal S. Shah
4. Jyotsna S. Shah

4. As per the records of the Office of Registrar of Companies, Gujarat, the following persons were shown as the Directors of the company (as on 30/11/2001).

1. Satish R. Shah
2. Shetal S. Shah
3. Hitesh J. Sanghvi
4. Mahendra Shah
5. Jalas Batra

5. It was observed that the company had not complied with the listing requirements, inasmuch as that it has failed to submit distribution schedule and financial results to BSE. As against last three years distribution schedules asked by the investigating team, the company vide its letter dated 28/04/01, submitted only one distribution schedule dated December 22, 2000. The company was issued reminders dated February 6, 2001, March 7, 2001, July 17, 2001 etc. which indicates that the company has not been complying with the Regulatory requirements.

6. Investigations revealed that the price of the scrip at BSE, during the period October 01, 1999 to March 31, 2000, ranged between Rs. 6.80 to Rs. 38.75. The scrip was illiquid prior to October 1999 and the volumes in the scrip were insignificant till November 19, 1999. The scrip touched its high of Rs. 38.75 on December 30, 1999. The daily price/ volume of the scrip, on those days when it was traded, from January 01, 1999 to March 31, 2000 is as under:

Date	Open	High	Low	Close	Volume
10-02-99	8.9	8.9	8.9	8.9	7000
05-03-99	9	9	9	9	5000
13-05-99	9	9	9	9	11000
19-05-99	8.85	8.85	8.85	8.85	6500
31-05-99	8.85	8.85	8.85	8.85	12000
23-06-99	8.95	8.95	8.95	8.95	11000
30-06-99	8.9	8.9	8.9	8.9	10500
26-10-99	6.8	6.8	6.8	6.8	200
01-11-99	10	10	10	10	100
18-11-99	12.45	12.45	10.5	12.45	6900

19-11-99	14.95	15.55	14.1	15.55	16100
22-11-99	19.4	19.4	19.4	19.4	120900
24-11-99	21	23.3	21	23.3	15900
25-11-99	23.3	23.3	23.3	23.3	6700
26-11-99	23.3	23.3	22.6	23.3	12700
29-11-99	25.15	25.15	25.15	25.15	31500
30-11-99	27.15	27.15	26	27.1	37400
01-12-99	29	29	25	26.4	14200
02-12-99	26.05	26.85	24.5	24.55	8500
03-12-99	24	26.1	22.7	24.5	22900
06-12-99	24	26.45	24	26.45	14500
07-12-99	28.5	28.5	27.1	28.5	16700
08-12-99	28.4	28.4	26.5	26.5	13900

09-12-99	25.05	25.75	25.05	25.75	8300
10-12-99	26.5	26.5	25	25	22600
13-12-99	25	26.75	25	26.75	3100
14-12-99	26	27	26	26	18400
15-12-99	24	24	24	24	200
16-12-99	22.2	23	22.1	22.55	4300
17-12-99	22.75	24.3	22.75	24.25	12500
20-12-99	25.8	26.15	25	26.15	3800
21-12-99	27.25	28.2	27	28.2	2200
22-12-99	30.4	30.4	30.4	30.4	38400
23-12-99	32.8	32.8	30	32.8	35400
24-12-99	33.05	35.4	31.5	32.4	10700
27-12-99	31.4	34.95	31.4	33.05	9700
28-12-99	33	35.65	32	35.65	10700
29-12-99	38.25	38.25	33	35.9	8000
30-12-99	34.5	38.75	33.05	37.3	15900
03-01-00	40	40	35	35	29300

04-01-00	32.25	32.25	32.25	32.25	5600
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It can be seen from the above that the shares were traded only 7 times prior to October 26, 1999, which indicates that the shares of the company were illiquid in the period January-October, 1999.

7. Investigations revealed that Shri Mahendra A. Shah, Harvic Management Services Ltd., Mayekar Investment Pvt. Ltd. and Rajesh N. Jhaveri were the predominant traders in the scrip of the company, during the period under investigation. It was also observed that trading of these persons by and large contributed to the initial price rise in the scrip. It was also seen that after they created investor interest in the scrip they started selling the shares, which they were already holding and/or had purchased from the management. The trade orders of Shri Mahendra A. Shah and associates, including Harvic Management and Mayekar Investment Private Ltd, are as follows:

Orders of Mahendra A. Shah through M/s Harvic Management (put through M/s BM Gandhi Securities)

Broker	Ter	B/s	Rate	Quantity	Disclosed	Added/Del	Date	Time	Client
73	10	B	10	30500	30500	A	01-11-99	12:42:34	1007
73	10	B	12.5	20000	20000	A	18-11-99	10:21:59	1007
73	10	B	12.4	20000	20000	A	18-11-99	10:22:06	1007
73	10	B	12.45	0	20000	U	18-11-99	10:24:37	1007
73	10	B	.0	20000	20000	D	18-11-99	14:28: 31	1007
73	10	S	12.45	10000	10000	A	18-11-99	14:31:21	1007
73	10	S	24	1500	1500	A	06-12-99	10:19:09	1007
73	10	S	26.45	1200	1200	A	06-12-99	10:21:16	1007
73	10	B	26.45	9600	9600	A	06-12-99	14:44:26	1007

Orders of Shri Mahendra A. Shah through Shri Rajesh N Jhaveri (through Shri Shrikant G. Mantri)

Broker	B/s	Rate	Quantity	Discl		Date	Time	Order No.	Client
738	S	19.4	26500	26500	A	22-11-99	10:44:25	738040014	R0038
738	S	19.4	7000	7000	A	22-11-99	13:43:32	738040026	R0038
738	S	19.4	10000	10000	A	22-11-99	15:26:02	738040053	R0038
738	S	27.15	20000	2000	A	30-11-99	10:18:05	738040101	R0038
738	S	27.15	20000	2000	A	30-11-99	12:59:22	738040142	R0038

738	B	24.5	20000	20000	A	01-12-99	11:53:04	738040219	R0038
738	B	24.555	20000	20000	A	01-12-99	11:53:30	738040220	R0038
738	B	24.8	20000	20000	A	01-12-99	11:57:38	738040223	R0038
738	B	24.9	20000	20000	A	01-12-99	11:57:46	738040224	R0038
738	B	24.95	20000	20000	A	01-12-99	11:57:50	738040225	R0038
738	B	25	8900	8900	A	01-12-99	11:58:21	738040226	R0038
738	B	24	25000	25000	A	02-12-99	10:44:00	738020076	R0038

738	B	24.25	25000	25000	A	02-12-99	10:44:08	738020077	R0038
738	B	24.5	25000	25000	A	02-12-99	10:44:14	738020078	R0038
738	B	0	24800	24800	D	02-12-99	14:09:34	738020078	
738	B	22.7	25000	2500	A	03-12-99	11:01:09	738040406	R0038

8. It was observed that the sellers constituting Shri Mahendra A. Shah, Harvic Management Services Ltd, Mayekar Investment Private Limited etc, in connivance with Rajesh N Jhaveri, put fictitious "buy" orders, so as to misguide the investors into believing in the existence of buying interest in the shares of the company, thereby creating artificial volumes in the company's shares. It was also observed that Shri Mahendra Shah, along with others, had sold considerable amount of shares of the company when the prices were rising.

9. The investigations team's correspondence with the company indicated that Shri Mahendra Shah was the Managing Director of the company. It was ascertained that Shri Shah became the Managing Director of the company after the above events.

10. Investigations have established, based on the above mentioned transactions, the role played by Shri Mahendra Shah in the manipulation of the shares of the company. The records examined by the investigating team revealed that Shri Mahendra A. Shah bought and sold heavily in the scrip during the investigation period along with Harvic Management Services Ltd. and Mayekar Investment Pvt. Ltd. and had sold the shares predominantly through M/s Rajesh N. Jhaveri. Besides, there were also attempts made by Shri Mahendra Shah and the entities named above to place huge buy orders in the scrip which created a false picture in the minds of the common investors and induced them to buy or invest in the scrip. This was done with a view to increase the share price and to maintain the price movement. This also enabled these entities to subsequently offload large quantities of shares in the market mostly in connivance with the management/promoter group. M/s Harvic Management Services Ltd. and Mayekar Investments Pvt. Ltd. had actively aided and abetted Shri Mahendra A. Shah in the manipulation process. These entities have traded heavily in their own account also.

11. During the course of the investigations, it was also observed that the company had issued 52,00,000 shares at Rs. 10/- per share, on preferential basis, on January 05, 2000, to various investors, including the promoter group. Perusal of the bank account statement of the company revealed that the company had resorted to 'fictitious book entry' for showing subscription towards preferential allotment. It was further observed that the company had shown a credit of only Rs. 4.80 crores in the bank account, as against Rs. 5.20 crores required to have been received (52 lac shares @ Rs 10 per share), leading to an apprehension that the allotment of shares to these investors was irregular and improper and that there was no genuine infusion of funds into the account of the company. Thus, the whole process of funding towards the preferential allotment was shown as a 'book entry' and shares were allotted to various investors, including promoter group, without actual infusion of funds. The net balance in the company's account had remained almost constant, even after the last credit entry pursuant to preferential issue.

12. Further, it is observed from the extract of statement of bank account of the company that all these transactions have been reflected on the same day i.e. January 5, 2000, the details of which are re-produced hereunder :

Date	Cheq. No	Particulars	Debit	Credit	Balance
5.1.00		By Trf		40,00,000	40,11,911.05
5.1.00	600812	To Transfer	40,00,000		11,911.05
5.1.00		By Trf		40,00,000	40,11,911.05
5.1.00	600813	To transfer	40,00,000		11,911.05
5.1.00		By trf		30,00,000	30,11,911.05
5.1.00	600814	To transfer	30,00,000		11,911.05
5.1.00		By trf		30,00,000	30,11,911.05
5.1.00	600815	To transfer	30,00,000		11,911.05
5.1.00		By trf		10,00,000	10,11,911.05
5.1.00	600824	To transfer	10,00,000		11,911.05
5.1.00		By trf		40,00,000	40,11,911.05
5.1.00	600816	To transfer	40,00,000		11,911.05

5.1.00		By trf		40,00,000	40,11,911.05
5.1.00	600817	To transfer	40,00,000		11,911.05
5.1.00		By trf		40,00,000	40,11,911.05
5.1.00	600818	To transfer	40,00,000		11,911.05
5.1.00		By trf		40,00,000	40,11,911.05
5.1.00	600819	To transfer	40,00,000		11,911.05
5.1.00		By trf.		40,00,000	40,11,911.05
5.1.00	600820	To transfer	40,00,000		11,911.05
5.1.00		By trf		40,00,000	40,11,911.05
5.1.00	600821	To transfer	40,00,000		11,911.05
5.1.00		By trf		40,000,000	40,11,911.05
5.1.00	600823	To transfer	30,00,000		10,11,911.05
5.1.00		By trf		40,00,000	50,11,911.05
5.1.00	600822	To transfer	40,00,000		10,11,911.05
5.1.00		By trf		10,00,000	20,11,911.05
5.1.00	600826	To transfer	10,00,000		10,11,911.05
5.1.00	600827	To transfer	10,00,000		11,911.05
		Total	4,80,00,000	4,80,00,000	

It is seen that the amounts received towards the preferential allotment of shares were "credited" to and "debited" from the company's account on the day of the allotment itself.

13. On the same issue, Adjudicating proceedings have been initiated by SEBI against the company, for determining the possible violation of the provisions of Chapter VI A of SEBI Act, 1992 read with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

14. The representatives of the company were given numerous opportunities to appear before the investigating authority and submit full information. However, the company has chosen not to submit full information/details and has failed to respond to various letters/summons issued by SEBI. The details of letters sent to the company are as under:

Date	Particulars	Remarks
January 12, 01	Letter requesting the company to submit information	No reply
February 6, 01	Reminder to the company	The company was again reminded to send the memorandum and articles of association of the company, latest annual reports, copy of the distribution schedules, bank details, among others.
February 16, 01	Reminder	Request for extension from the Co.
March 03, 01	Reminder	No reply
March 14, 01		Furnished part of the information

April 12, 01	Letter requesting company to furnish all the information	No reply
April 28, 01		Furnished part of the information
July 02, 01	Letter to furnish all information	No reply
July 10, 01		Furnished Distribution schedule of Co.
July 17, 01	Letter to furnish information	No reply
August 29, 01	Letter to furnish information	No reply
September 19, 01		Furnished Bank statement of a/c.
February 12, 02	Given another opportunity of furnishing the information	No reply
April 30, 02	Summons to appear in person along with details	No reply
May 10, 02		Furnished part of the information and promised to be present on May 20, 2002
May 21, 02	Summons to appear in person on May 31, 02	No reply
June 03, 02	Summons to appear in person on June 13, 02	No reply
July 07, 02	Informed the parties that action will be taken based on available records.	No reply
July 11, 02		Company informed that they shall be present in SEBI office within 15 days from the date of letter i.e. July 26, 2002.

SHOW CAUSE NOTICE, REPLY AND HEARING

15. Pursuant to the said investigation, SEBI issued a show cause notice dated 29.9.03, calling upon the company and its directors to show cause as to why suitable directions under section 11(4) read with 11B of the Securities and Exchange Board of India Act, 1992 should not be issued. The company submitted its reply vide letter dated 15.12.03.

16. In the interest of natural justice, an opportunity of hearing was granted to the company before me on 22.12.03. Shri Mahendra Shah, representing the company, appeared before me on 22.01.04 and reiterated the company's submissions, made vide letter dated 15.12.03.

FINDINGS

17. I have carefully perused the material available on record. I have also considered the submissions made by the company, which inter alia, include the following :

a. The company is not aware and is not concerned whether the scrip was illiquid during the said period or that the volumes started going up thereafter.

b. The total number of shares of the company dealt with on the Stock Exchange amount to about 6,41,200 shares which does not form any substantial percentage of the total equity share capital of the company. Moreover, none of these shares were held by anybody from the promoter group. None of the top 19 shareholders of the company sold any of the shares held by them. There is, therefore, no question of the so-called promoter group off-loading its shares.

c. The company further submitted that 5200000 shares were allotted on preferential basis. However, it was not true that there were any fictitious book entries showing subscription towards preferential allotment. It is denied by the company that it had shown a credit of Rs.4,80,00,000/- in the Bank statement account instead of Rs.5,20,00,000/- being the full issue value of 5200000 shares allotted on preferential basis. The company's Bank Account shows credit for the full amount of Rs.5,20,00,000/-.

d. The company submitted that it was of no consequence whether 2400000 shares out of the 52,00,000 shares allotted on preferential basis were allotted to the so-called promoter group. None of the said 5200000 shares allotted on preferential basis has been sold. Consequently the said 5200000 shares have nothing to do with the price movement of the scrip on the Stock Exchange.

e. There was no manipulation in the price of the scrip of the company at the Stock Exchange.

18. With respect to the preferential issue made by the company, I observe that:

- i. By the company's own admission, vide its letter dated September 13, 2001, it maintains a single bank account.
- ii. Investigations into this account have revealed that the receipts in the account were only to the extent of Rs. 4.8 crores, as against Rs. 5.2 crores, being the total value of the shares issued on preferential basis.

19. Thus, the company has violated the provisions of Clause 13.4.2 of SEBI (Disclosure and Investor Protection) Guidelines, 2000, which reads as under:-

"The equity shares and securities convertible into equity shares at a later date, allotted in terms of the above said Resolution shall be made fully paid up at the time of their allotment".

20. The company has denied the above allegation. However, no evidence has been brought forward to prove that the entire amount was credited to the bank account, at the time of allotment. Thus, the company has allotted shares in violation of the above provisions of the SEBI (DIP) Guidelines, 2000.

21. On a more serious note, I find that there is ample evidence to indicate that the preferential allotment was irregular and not in accordance with law in as much as the company has resorted to fictitious book entries for showing receipt of subscription towards preferential allotment of shares. Thus, I find that there was no actual infusion of funds into the account of the company, on account of the preferential issue. Thus, the preferential issue has resulted in creation of fresh capital, without any infusion of funds.

22. I note that Regulation 6 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 reads as under :-

"Prohibition on unfair trade practices relating to securities – no person shall –

- a.
- b.
- c.

d. Indulge in falsification of the books, accounts and records (whether maintained manually or in computer or in any other form)

23. In view of the above, I am convinced that the company is guilty of violating the provisions of Regulation 6(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, read with clause 13.4.2 of SEBI (Disclosure and Investor Protection) Guidelines, 2000.

23. I have also noted that the company did not respond to the letters/ summons issued by SEBI on a number of occasions, which speaks volumes for the defiant attitude of the company towards the regulatory requirements. On such occasions that the company did respond to some of the letters issued by SEBI, information as sought by SEBI was not submitted. This attitude has hampered SEBI in discharging its statutory functions.

24. In view of the above, I am convinced that the continuance of such a company in the securities market is detrimental to the interest of investors and would endanger the safety and integrity of the market.

25. In this regard, 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."

ORDER

26. Therefore, in exercise of the powers conferred upon me by virtue of Section 19, read with Section 11 (4)(b), Section 11 and Section 11B of the Securities and Exchange Board of India Act, 1992, read with Regulation 6(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, I hereby direct that M/s Sawaca Business Machines Ltd be prohibited from accessing the capital market and also be prohibited from buying, selling or dealing in securities, directly or indirectly, for a period of 5 (five) years.

27. This order shall come into force with immediate effect.

