

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

BACKGROUND

1. An investigation was conducted by SEBI to find out whether there was any price manipulation in the scrip of Sawaca Business Machines Limited (formerly Sawaca Finance Ltd). 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:

<i>Date</i>	<i>Open</i>	<i>High</i>	<i>Low</i>	<i>Close</i>	<i>Volume</i>
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

2. 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.

3. Investigations revealed that Shri Mahendra A. Shah traded in the scrip of Sawaca Business Machine Limited (hereinafter referred to as "SBML"), with different brokers/sub-brokers, during the period under investigation. In order to ascertain details of his trading in SBML's shares, Shri Mahendra A. Shah was summoned to appear before the investigating team on May 10, 2002. Shri Shah appeared before the investigating team, but did not submit any records. The personal appearance was therefore postponed to May 20, 2002, to which Shri Mahendra A. Shah agreed in writing. However, Shri Shah failed to either appear before the investigating team or to submit any information, as sought by the investigating authority. The details of summons sent to Shri Shah to appear before the investigating team are as under:

Sr. No.	Date	Particulars	Remarks
1	May 02, 02	Summons to appear in person along with details on May 10, 2002	Appeared without any record/details and promised in writing to be present in SEBI office on May 20, 2002.
2.	May 21, 02	Summons to appear in person on May 31, 2002.	Did not respond.
3.	July 02, 02	Informed that SEBI shall proceed in the matter in view of his non-cooperation and dealing in the scrip.	Did not respond

4. The dealings of Shri Mahendra A. Shah with various brokers/sub-brokers are as under:

Name of broker	Sett. No/date	Purchases	Sales	Gross	Net
Harvic Management	32	0	200	200	-200
(Sub-broker to BM Gandhi Sec. P. Ltd.)	35	100	8,900	9,000	-8,800
	36	0	100	100	-100
	37	0	800	800	-800
	38	20,300	20,300	40,600	0
	39	500	600	1,100	-100
	40	2,500	2,700	5,200	-200
Rajesh N. Jhaveri	22.11.99		43,500	43,500	-43,500
(Unregistered sub-broker to Shrikant G. Mantri	30.11.99		28,600	28,600	-28,600
	22.12.99		30,000	30,000	-30,000
Parshva Finance	38	9,100	9,100	18,200	0
(Unregistered sub broker to Jyotish Bhogilal)	39	0	18,200	18,200	-18,200
	40	700	0	700	700
	41	0	1,500	1,500	-1,500
		9,800	28,800	38,600	-19,000
Total		33,200	1,64,500	1,97,700	-1,31,300

5. The investigating report also observed that Shri Mahendra A. Shah was one of the main persons responsible for the rise in price and volume of the scrip, during the period under investigation. It was also observed that Shri Mahendra A. Shah had given huge orders to different brokers/sub-brokers with whom he had dealt. The details of his orders 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
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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

6. Investigation also established, based on the above transactions, that Shri Mahendra A. Shah was involved in creating artificial volume in the scrip of SBML inasmuch as the scrip of SBML was more or less dormant till September 1999 and volumes started picking up only when Shri Mahendra A. Shah and others (Harvic Management, Mayekar Investments etc.) started trading in the scrip. Thus, it was held that Shri Mahendra A. Shah was guilty of violating the provisions of Regulations 4(a), (b) and (d) of SEBI (Prohibition of fraudulent and unfair trade practices relating to securities market) Regulations, 1995. Further, in spite of getting ample opportunities to appear before the investigating authority with all the records of his trading, Shri Shah had chosen not to submit the information or to appear before the investigating team, except on one occasion i.e on 10.5.02, and even on this date he failed to submit the records / details sought by the investigating team.

SHOW CAUSE NOTICE, HEARING AND REPLY

7. Pursuant to the investigation, a show cause notice dated September 29, 2003 was issued to Shri Mahendra A. Shah, calling upon him to show cause as to why suitable directions under Sections 11B and 11(4) of the SEBI Act, 1992 should not be issued to him. In reply to this, Shri Mahendra A. Shah made his submissions vide letter dated 16.12.03.

8. In the interest of natural justice, an opportunity of personal hearing was granted to Shri Mahendra A. Shah before me on 22.1.04. Shri Mahendra A. Shah appeared before me and reiterated his submissions, made vide his letter dated 16.12.03.

FINDINGS

9. I have carefully examined the material available on record, including the submissions made by Shri Mahendra A. Shah, vide his letter dated 16.12.03. Vide the said letter, he, inter alia, submitted that :

- the volume of the scrip constituting about 6,41,200 shares, alleged to have been dealt by him, amounts to 1.5% of the company's capital and as such it cannot be considered an amount which is capable of affecting the price of the scrip to any substantial extent, on the stock exchange.
- He was the Managing Director of the company and he had traded for a few shares of the company.
- He could not remain present on some occasions due to ill health and other reasons.
- He had not purchased any shares from the promoters of the company or sold any shares to the promoters. He also submitted

that he had not purchased any shares from the top 19 shareholders of the company and also denied having any relationship with M/s Harvic Management or Mayekar Investments.

v. He denied being responsible for the alleged increase in the shares or in creation of artificial volume in the scrip.

9. I find that Shri Mahendra A. Shah, by enrolling as a common client with various brokers, had traded significantly in the scrip of SBML.

10. I do not find merit in the submissions of Shri Mahendra A. Shah, as it has been established that the scrip of the company was illiquid before October 1999 and volumes started picking up only when Shri Mahendra A. Shah and others viz. Harvic Management, Mayekar Investments etc started trading in the scrip.

11. The contention of Shri Mahendra A. Shah, that the total number of shares dealt with by him was 1.5% of the total share capital of the company and the same cannot affect the price or volume of the scrip is untenable inasmuch as the scrip of the company was illiquid before October 1999 and therefore, even the shares forming 1.5% of the total share capital of the company are capable of creating artificial volume in the scrip of the company, as is observed from the details of the transactions of Shri Mahendra A. Shah and its effect on the share price of the company.

12. I note that the facts, as enumerated above, indicate that Shri Mahendra A. Shah was responsible for increasing the share price of the company's shares, by putting orders at successively higher prices. He was putting huge 'buy' orders in the scrip, so as to indicate existence of buying interest in the scrip, to the market, thereby creating artificial volumes in the scrip. I have also observed that Shri Shah had sold considerable amount of shares of the company when the prices were rising.

13. I am not convinced with the contention of Shri Mahendra A. Shah that he could not attend and submit the information to the investigating authority due to ill health etc inasmuch as I do not find any document on record in support of his contention. In the event of ill health, he ought to have informed the investigating authority and sought the postponement of date for submitting the information.

14. In the light of facts and circumstances of the case, I conclude that Shri Mahendra A. Shah had wilfully defaulted in submitting information to SEBI. Shri Mahendra Shah, well supported by persons like M/s Rajesh N. Jhaveri, was instrumental in the price manipulation of the scrip of SBML. I am also convinced that M/s Harvic Management and M/s Mayekar Investments also aided and abetted Shri Mahendra A. Shah in the said exercise of manipulation of the price of the scrip and were also involved in creating artificial volumes. I also find that Shri Mahendra A. Shah resorted to creating artificial volumes through Harvic Management and Mayekar Investment and at the same time offloaded the shares through Rajesh N. Jhaveri (broker of Ahmedabad Stock Exchange) and others. I have noted that Enquiry proceedings have been initiated against the brokers involved in the price manipulation of the company's shares.

15. I also note that, though Shri Mahendra A. Shah was not directly associated with the company during the period under investigation, he has been subsequently appointed as Managing Director of the company and has, by far, been the largest seller in the scrip.

16. In this regard, I note that Regulations 4(a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read as under-

"Prohibition against market manipulation

4. No person shall –

(a) affect, 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)

(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)"

17. I also note that Regulation 13 of the 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."

18. In view of the above, I find Shri Mahendra A. Shah guilty of indulging in creation of artificial volume and in price manipulation of the shares of the company. I find that his conduct is highly detrimental to the interest of investors and also of the securities market. I also note that the defiant and non-cooperative attitude of Shri Mahendra A. Shah has hampered SEBI in discharging its statutory functions. Therefore, I am convinced that continuance of Shri Mahendra A. Shah, as a constituent of the securities market, would not be in the interest of the securities market. In view of this, I find that it is a fit case to issue directions under the

provisions of SEBI Act, 1992, read with the relevant regulations.

ORDER

19. 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 4(a),(b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Regulation 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, I hereby direct that Shri Mahendra A. Shah be prohibited from associating with any corporate body in 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.

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

A.K.BATRA

PLACE : MUMBAI

DATE : 13 July , 2004

WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA