

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 SHRI SATISH R. SHAH, IN THE MATTER OF SAWACA BUSINESS MACHINES LIMITED.

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.

- i. Satish R Shah
- ii. Shetal S Shah
- iii. Vishal S. Shah
- iv. 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).

- a. Satish R. Shah
- b. Shetal S. Shah
- c. Hitesh J. Sanghvi
- d. Mahendra Shah
- e. J alas 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 which indicates that the company has not been complying with the Regulatory requirements.

6. Investigations revealed that one Shri Mahendra A. Shah, along with entities such as 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. Investigations have established that trading by 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.

7. 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.

8. 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.

9. 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.

10. 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

11. Pursuant to the said investigation, SEBI issued a show cause notice dated September 29, 2003, calling upon the company and its directors to show cause as to why suitable directions under section 11(4) read with section 11B of the Securities and Exchange Board of India Act, 1992 should not be issued against them. Shri Satish R. Shah, director of the company, submitted a reply vide letter dated December 11, 2003, inter alia, stating that he was a director of the company for some time and had resigned with effect from December 01, 2001. He further stated that he had never sold any of his shares to Shri Mahendra S. Shah or to any other person and all the shares allotted by the company are still standing in his name. He further submitted that he was not a party to the alleged market manipulation and denied having violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 and pleaded for withdrawal of the show cause notice.

12. In the interest of natural justice, an opportunity of hearing was granted to Shri Satish R. Shah before me on December 22, 2003. Shri Satish Shah appeared before me and made submissions.

FINDINGS

13. I have carefully examined the contents of the investigation report, the show cause notice and other material available on record. My findings in this regard are as under.

14. I have noted the submissions made by Shri. Satish Shah, in his letter dated December 11, 2003, to the effect that he has not sold any of the shares held by him to Shri Mahendra Shah, who is alleged to have indulged in manipulation of the shares of the company. I have also noted that no specific allegation of price manipulation has been made against Shri. Satish Shah. Hence, I do not record any findings in this regard.

15. However, regarding the allegations made against the company and its directors, 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.

16. 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".

17. Shri. Satish Shah 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.

18. 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.

19. 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)

20. 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.

21. 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 prescribed by law. This attitude has hampered SEBI in discharging its statutory functions.

22. I also note that Shri Satish R. Shah was a director of the company during the relevant period and resigned only with effect from 01.12.2001. Shri Satish R. Shah, being a director of the company, at the relevant point of time, shall be responsible for the acts of commission and omission by the company.

23. Thus, I am convinced that Shri Satish R. Shah is not a fit and proper person and continuance of such a person in the securities market is detrimental to the interest of investors and also endangers the safety and integrity of the market.

24. I also 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

25. 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 Regulations 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, I hereby direct that Shri Satish R. 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 2 (two) years.

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

PLACE : MUMBAI
DATE : 13 July, 2004

A.K.BATRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA