

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

ORDER UNDER SECTION 11(4) AND 11B OF SEBI ACT, 1992 READ WITH REGULATION 11 OF SEBI PROHIBITION OF UNFAIR TRADE PRACTICES) REGULATION 2003 AGAINST DIRECTORS OF M/S SURAJ SECURITIES AND FINANCE LTD.

WTMN/ 202/CFD/8/04

1.0 BACKGROUND

- 1.1 Brahaspati Financiers Ltd. (hereinafter referred to as "BFL") came out with a Public Issue of 24,00,000 equity shares of Rs.10/- each for cash at par aggregating Rs.240 Lakhs. As per the prospectus dated 17.06.96, the public issue of BFL was lead managed by M/s Suraj Securities and Finance Ltd. (SSFL). The issue opened on 25th July 1996 and closed on 5th August 1996. As per the prospectus, 26,17,200 equity shares of Rs.10/- each aggregating Rs.261.72 lacs were reserved for firm allotment to promoters, directors, their friends, relatives and associates, to be subscribed before opening of the Public Issue.
- 1.2 On receipt of certain complaints with respect to the irregularities related with the public issue, Chairman SEBI vide his order dated 8th December 1998 ordered an investigation into the affairs of buying, selling or dealing in the shares of BFL.

2.0 FINDINGS OF THE INVESTIGATION AGAINST M/S SURAJ SECURITIES & FINANCE LTD. (SSFL)

The main findings of the investigations conducted by SEBI, against SSFL are as under:

2.1 Promoters contribution merely rotation of funds

- A. In terms of SEBI (Disclosure and Investor Protection) Guidelines and as per the Prospectus of BFL, entire promoters' contribution was required to be brought in before opening of the Public Issue. SSFL vide their letter dated 22.07.96 submitted a CA certificate dated 20.7.96 purportedly from M/s Manmohan Singh & Co., Chartered Accountants, certifying that the following entities contributed towards promoters' contribution: -

Name of the concern	No. of shares	Amount (Rs.)
Chhavi Holdings Pvt. Ltd. (Chhavi)	5,20,000	52,00,000
Abhishek Fincap Services Pvt. Ltd. (Abhishek)	5,26,500	52,65,000
Riya Fincap Pvt. Ltd. (Riya)	4,74,200	47,42,000
Deepal Fincap Services Pvt. Ltd. (Deepal)	5,20,000	52,00,000
Happy Fincap Services Pvt. Ltd. (Happy)	5,76,500	57,65,000
Total	26,17,200	2,61,72,000

- B. The above-mentioned entities were disclosed as associate concerns of BFL in the Prospectus. Further, as per the disclosures made in the prospectus, these companies were incorporated in December 1995 and were yet to start operations. No financial details relating to them were incorporated in the Prospectus.
- C. Investigations revealed that the receipt of promoters contribution of Rs. 261.72 lacs prior to opening of the public issue of BFL on 25.07.96 was a farce and merely a juxtaposition of accounting entries between various entities connected to BFL through their bank accounts with Central Bank of India (CeBI). Various front entities were created for the purpose of these transactions and their bank accounts opened with CeBI. A detailed examination of the transactions in the current bank account No. 1295 of BFL and its abovementioned associate concerns with Central Bank of India (CeBI), Bengali Market, New Delhi showed that various payments were made by BFL to Suraj Finvest Pvt. Ltd. (Suraj), Aditya Fin Hold Services Pvt. Ltd. (Aditya), Anurag Fincap Services Pvt. Ltd. (Anurag), Rishab Secfin Pvt. Ltd. (Rishab) and Pushpa Capital Services Pvt. Ltd. (Pushpa). This money was later routed through several entities and finally shown as receipt from associate entities towards promoter contribution in the account of BFL. Interestingly, a scrutiny of the bank accounts of these concerns revealed that the only transactions in these accounts were those pertaining to routing of funds for the purpose of promoters' contributions of BFL. The receipt of promoters' contribution was merely by way of book entries and no funds were actually received, so much so, that on 24.7.96 i.e. a day before the opening of the issue, the BFL's bank account showed a meager balance of Rs.4,000/- only.

2.2 Forgery

- A. The purported certificate dated 20.7.96 received from M/s. Manmohan Singh & Co., Chartered Accountants certifying the raising of promoters' contribution contained the signature of Shri Arun Dogra. Findings of the investigations (that raising of promoters contribution was a farce) were communicated to M/s. Manmohan Singh & Co. for their comments. In response, Shri Arun Dogra, a partner of the firm, stated that the signatures on the impugned certificate were in his name but were forged by some one. He denied having any knowledge of BFL and about the person who conducted their audit. Similarly, Shri Deepak Khanna, another partner of the firm having an address of E-48, Greater Kailash Enclave-II, New Delhi denied rendering any professional services to BFL. It may be mentioned that the address of Shri Deepak Khanna was given as

address of M/s. Manmohan Singh & Co. in (a) the Auditors report included in prospectus of BFL and (b) certificate dated 20.7.96 from auditors.

B. Thus, it was found that :

- a) the auditors report dated 10.2.1996 incorporating the financial results of the company for the years ended on 31.3.1991, 31.3.1992, 31.3.1994 and 31.3.1995 as furnished in the BFL prospectus (page 18-19) was fabricated and not genuine.
- (b) Auditors certificate dated 20.7.1996 which was furnished to SEBI along with letter dated 22.7.1996 of SSFL was false
- (c) Disclosure about consent having been obtained from auditors on page 27 of the BFL prospectus was false.

2.3 Misleading/ fraudulent disclosures regarding management of BFL

A. As per the Prospectus of BFL, "the company is presently under the overall control of Shri S.K. Gupta and his other associates. The management of the Company is vested in the Board of Directors under the guidance of Shri Satish Kumar Gupta." However, in his statement recorded during the investigations, Shri S.K. Gupta inter-alia stated that :

- (a) he and his wife Mrs. Suman Gupta had resigned as Directors of BFL prior to the opening of its Public Issue (after change in management of BFL).
- (b) Their resignations were handed over at the new address of BFL at 4, Central Lane, Bengali Market, New Delhi – 1 to Shri Rajneesh Gandhi and Shri Diwakar Gandhi.
- (c) The main Director who took charge from him was Shri Rajneesh Gandhi and the affairs relating to the company's Public Issue were looked after by the new Directors. It has also been categorically stated by Shri S.K. Gupta that the fact of his resignation along with that of Smt. Suman Gupta and Smt. Nav Nidhi Garg was in the knowledge of Shri Sanjay Raveri, Chartered Accountant, working with M/s Suraj Securities and Finance Ltd.

2.4 Shri S.K. Gupta also stated that entities Happy, Abhishek, Deepal, Riya and Chhavi belonged to Shri Rajneesh Gandhi and Shri Diwakar Gandhi. He further stated that he was a Director of these companies and had resigned at almost the same time as he resigned as the Director of BFL. He did not have any information about the receipt of promoters' contribution by BFL from various parties as the affairs of these companies were being looked after by Shri Rajneesh Gandhi and Shri Diwakar Gandhi. Regarding entities Anurag, Pushpa, Aditya, Suraj and Rishab, he stated that he had never heard of any of these concerns, had no dealings with them and was not aware of any payments by BFL to these concerns. When confronted with the account opening form of Current Account No. 1295 of BFL with CeBI showing Shri Sav Sachin Chaku as its authorised signatory and account introduction by Shri Mug Singh on 6.5.96, he stated that he had no knowledge of this account and had never operated this account. He stated that he did not know Shri Sav Sachin Chaku or Shri Mug Singh and had never met them.

2.5 The investigations find clear association of Shri Diwakar Gandhi with BFL. Further, an examination of the account opening forms of BFL, its associate concerns and bank accounts of entities to whom payments were made by BFL available with CeBI revealed that entities Happy, Abhishek, Deepal, Riya and Chhavi described as associate concerns of BFL were in fact controlled and managed by Shri Diwakar Gandhi from his office. Similarly, investigations revealed that the entities Anurag, Pushpa, Aditya, Suraj and Rishab and other entities which participated in the aforesaid transactions were also connected with BFL and their affairs were controlled and managed by Shri Diwakar Gandhi from his office.

2.6 In view of the findings of the investigations conducted by SEBI, Chairman SEBI, vide his order dt. 27.01.03 passed u/s 11B of SEBI Act 1992 read with Regulation 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as "FUTP Regulations") debarred Shri Diwakar Gandhi, CA, BFL and its directors namely Shri S.K. Gupta, Smt. Suman Gupta, Smt. Navnidhi Garg, Shri K.N. Gupta and Shri Kapil Kumar Gupta along with SSFL from accessing and associating with the capital market for a period of 5 years.

3.0 Issuance of Show Cause notice and Replies:

3.1 Considering the seriousness of the matter and on finding that the directors of SSFL were actively involved and were responsible for the acts of omission and commission of SSFL, show cause notices dated 20.6.2003 were issued to directors of SSFL namely Shri DK Nahata-Chairman, Shri JL Bardia, Shri MK Nahata, Shri S Nagraj, Shri KK Garg and Shri VK Lodha and were forwarded to their last known addresses as obtained from the office of ROC, West Bengal.

3.2 Show cause notices sent to Shri KK Garg, Shri S Nagraj were returned undelivered by courier with the messages, "shifted to unknown place" and "address not traceable" respectively. Further, Shri MK Nahata failed to respond to the show cause notice sent through speed post. Replies have been received from Shri DK Nahata-Chairman, Shri JL Bardia and Shri VK Lodha.

3.3 Reply of Shri D K Nahata :

Shri DK Nahata vide his letter dated 21.7.2003 mainly stated that SSFL as a lead manager had carried out proper due diligence of BFL and relied upon all the documents/ certificates supplied by BFL for the purpose of drafting of the offer document. It was further stated that utmost care in carrying out due diligence and cross verification of information was done and neither SSFL nor he were party to all the allegations made by SEBI.

3.4 Reply of Shri JL Bardia :

Shri JL Bardia vide his reply dated 10.7.2003 stated that he had resigned from the directorship of SSFL and was never involved in day to day working of the company.

3.5 Reply of Shri VK Lodha

Shri VK Lodha vide his reply dated 19.8.2003 received on 26.8.2003 stated that SSFL has never remained under his active control and he never attended a single board meeting of company. It was stated that he had resigned from directorship on 21.6.97, which was accepted on 14.7.1997. It was further stated that due diligence certificate given by SSFL as Lead Merchant Banker was not signed by him and he was never party in the capacity of director for having taken the decision about filing the due diligence certificate to SEBI. He denied having knowledge of false CA certificate submitted by SSFL to SEBI. Shri Lodha had therefore requested that SEBI proceedings against him be dropped.

4.0 Personal hearing and submissions:

- 4.1 A personal hearing before me was granted to all the aforesaid persons on 12.12.03. In spite of the fact that the date of hearing was duly communicated to all of them, only Shri V K Lodha appeared in the said hearing and made submissions.
- 4.2 Shri V K Lodha in his oral submissions repeated the submissions made in his reply to the show cause notice issued by SEBI. He reiterated that he was a non-executive director, never attended any Board meeting and had resigned from directorship on 21.6.97. He further stated that due diligence certificate given by SSFL as Lead Merchant Banker was not signed by him and he was never party in the capacity of director for having taken the decision about filing the due diligence certificate to SEBI. He further denied having knowledge of false CA certificate submitted by SSFL to SEBI and requested that the proceedings against him be dropped.
- 4.2 Considering the service of the intimation upon Nahatas and their non appearance for the personal hearing without any plausible reason, I have decided to proceed against them ex-parte on the basis of the records available.

5.0 Another opportunity to the unserved directors

So far as other directors are concerned, who could not be served so far inspite of number of attempts made by SEBI, I instructed SEBI to undertake another exercise of serving the notice upon them in adherence to the principles of natural justice and fair play.

- 5.2 I find that in order to trace the present whereabouts of Shri S. Nagraj, who had last known address at Hyderabad, Hyderabad Stock Exchange (HSE) was requested by SEBI to deliver the letter. However, HSE could not serve the letter as it was found that there was no apartment by the name specified in the address of Shri S. Nagraj.
- 5.3 Notices to Shri M.K Nahata and Shri J L Bardia were serviced through Eastern Regional Office of SEBI on 28.01.04 and 29.01.04 respectively.
- 5.4 I have noted that Shri M K Nahata even after acknowledging the receipt of the notice, did not give any reply to the same. Therefore I have decided to proceed against him ex-parte on the basis of the material available on records.
- 5.5 A reply from Shri J L Bardia was received through Shri Sumeet Chawdhury, Advocate on 09.02.04 in which he stated as having acted as non-executive director of SSFL at the request of Shri D K Nahata. It was further stated that Shri Bardia had resigned from directorship w.e.f. 06.07.98. A copy of an affidavit signed by Shri D K Nahata was forwarded wherein it was stated that Shri J L Bardia was merely a professional director.
- 5.6 Shri K K Garg vide his letter dated 28.01.04 also replied and submitted that he was never involved in day to day affairs of the company and resigned from directorship w.e.f. 20.05.96. He has submitted a copy of his resignation letter dated 20.05.96 showing acknowledgement of the same by SSFL on the same date. He has also submitted copy of a letter dated 6.10.98 signed by Sh. D.K.Nahata informing Shri K.K. Garg that he had ceased to be a director w.e.f. May 1996.

6.0 Consideration of the issues and findings:

6.1 I have carefully considered the findings of the investigation report, show cause notices, replies received from different directors and the conduct of the directors of SSFL. From the above discussion, it emerges that affairs of Suraj Securities were managed by Shri D K Nahata and Shri M K Nahata. As far as other directors namely Shri V K Lodha, Shri J L Bardia and Shri K K Garg are concerned, it appears that they were not involved in day to day affairs of the company and as such all the decisions were taken by Shri D K Nahata and Shri M K Nahata.

As far as Shri S. Nagraj is concerned, he had apparently given wrong address to ROC.

6.2 I find that the prospectus of BFL which was filed with SEBI by SSFL did not disclose the involvement and interest of Shri Diwakar Gandhi in BFL. The fact of resignation of the core directors and change in management of BFL was also not disclosed. The prospectus of BFL showing Shri S.K. Gupta as promoter and in control of the affairs of BFL was therefore grossly misleading and fraudulent.

6.3 I also find that the financial statements as incorporated in the prospectus were false constituting misstatement in violation of the provisions of Section 62, 63 and 68 of the Companies Act, 1956. SEBI was also misled by furnishing of a forged and fabricated Chartered Accountant's Certificate certifying the raising of promoters contribution. The forged certificate was furnished to SEBI by SSFL.

6.4 I find that the terms of the Prospectus and the SEBI guidelines have been contravened to the detriment of the investing public who were induced to subscribe to the Public Issue of BFL on the assurance given in the Prospectus that entire promoter's contribution shall be brought in before the opening of the public issue. Apart from the said violations of the Companies Act, the misstatements and non-disclosures of material information in the prospectus are fraudulent acts as defined under Regulation 2(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and are violative of Regulation 3, 5 & 6(d) of the said Regulations r/w Regulation 3 & 4(2)(p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

6.5 I find that in his reply Shri DK Nahata, the Chairman of SSFL did not reply to any of the specific charges made out against him and SSFL. Further, his contention of having carried out proper due diligence of BFL is against the findings of investigations carried out by SEBI. Hence his submissions are not substantiated and therefore are not acceptable.

6.6 I also find that Shri DK Nahata and Shri MK Nahata, the main executive directors who were managing the affairs of the SSFL, the lead manager to the issue of BFL, did not exercise due skill, diligence and care and thus failed to comply with the Code of Conduct prescribed in Schedule III of the SEBI (Merchant Bankers) Regulations, 1992, the compliance with which is mandatory as per the Regulation 13 of the said Regulations. The due diligence certificates submitted by SSFL to SEBI while filing the draft prospectus of BFL and also subsequently on 22.7.96 stating that that no corrective action was needed before the opening of the issue were wrong and misleading.

7.0 Order

7.1 Having regard to the above, I, in exercise of the powers conferred upon me under Section 19 read with Section 11 (4) (b) and 11B of the SEBI Act, read with Regulation 11 of SEBI (Prohibition of Unfair Trade Practices) Regulations hereby debar Shri D K Nahta and Shri M K Nahta, who were the main directors responsible for the conduct of the affairs of SSFL at the relevant time, from accessing the securities market and associating themselves with the securities market by buying, selling or otherwise dealing in the securities in any manner whatsoever for a period of 5 years.

7.2 This order shall come into effect with immediate effect.

Place : Mumbai

Date : September 06, 2004

T M NAGARAJAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA