

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.

AGAINST SHRIKANT G MANTRI, MEMBER, THE STOCK EXCHANGE, MUMBAI, IN THE MATTER OF SAWACA BUSINESS MACHINES LTD. (EARLIER KNOWN AS SAWACA FINANCE LTD)

BACKGROUND

1. The shares of Sawaca Business Machines Ltd (earlier known as 'Sawaca Finance Ltd' and hereinafter referred to as 'SFL') were listed on The Stock Exchange, Bombay (hereinafter referred to as 'BSE') and Ahmedabad Stock Exchange.
2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged price manipulation in the scrip of SFL, during the period October – December, 1999. It was seen that there was unusual upward price movement in the shares of SFL during this period, the price having moved up from Rs. 8 to a high of Rs. 38. Similarly, it was also seen that the volumes in the shares, which were traded a total of 7 times in the whole year, prior to 26.10.99, went up significantly during the investigation period.
3. Investigations revealed that one Shri Mahendra Shah, who was subsequently appointed the Managing Director of the company, was the largest seller during the investigation period. It was observed that Shri Shah had created artificial volumes in the shares of SFL and had then offloaded a large quantity of shares in the market. It was also seen that Shri Shah had put in large buy orders to influence the price of the scrip and had created false/misleading appearance of demand/interest in the shares of SFL, thereby influencing the share price of the scrip.
4. As a part of investigations into the price manipulation of the shares of SFL, SEBI had looked into the roles of various brokers and sub-brokers who had dealt in the shares of SFL during the relevant period. It was seen that Shrikant G Mantri (hereinafter referred to as "SGM"), member, BSE, had traded in the scrip on behalf of Rajesh N Jhaveri (hereinafter referred to as "RNJ"), member, Ahmedabad Stock Exchange, who had in turn traded for Shri Mahendra Shah, one of the persons responsible for creation of artificial volumes and price manipulation in the shares of SFL. It was revealed that RNJ was not registered with SGM as a sub-broker, even though all the trades that RNJ done through SGM were actually for its own client, Shri Mahendra A Shah (hereinafter referred to as "Shri Shah"). In addition, SGM had put a number of large orders in the system, thereby giving an appearance of huge demand/interest in the scrip.
5. In view of the above, it was alleged that SGM had aided and abetted the client in creation of false market in the scrip and was thus guilty of having violated the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair trade practices relating to securities market) Regulations, 1995 (hereinafter referred to as "FUTP Regulations").
6. It was further alleged that SGM, by allowing RNJ to trade for its clients, allowed RNJ to act as a sub-broker, even though RNJ was not registered with SGM as a sub-broker. Hence, it was held that the conduct of SGM in not having shown due skill and care in his dealings with RNJ was in violation of Code of Conduct as prescribed under Schedule II read with regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as "Broker Regulations").

ENQUIRY PROCEEDINGS

7. In view of the above, having considered the investigation report, Chairman, SEBI, vide order dated 24th July 2003, appointed an Enquiry Officer (hereinafter referred to as "Enquiry Officer") to enquire into the alleged violations committed by SGM.
8. As required under regulation 6 of Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as "the Regulations"), the Enquiry Officer issued a show cause notice to SGM dated 31st October 2003, along with a copy of order of Chairman, SEBI, facts, findings and allegations arising out of SEBI investigations and a copy of statement of Sri G K Damani, authorized representative of SGM, advising SGM to show cause as to why action should not initiated against him for violation of FUTP Regulations, SEBI Circulars and Code of Conduct under the Broker Regulations.
9. SGM, vide letter dated 15th November 2003, in response to the show cause notice, sought documents relied up on by SEBI. Enquiry Officer vide letter dated 15th December 2003 informed SGM that copies of documents relied upon by SEBI were already sent along with show cause notice and to indicate if SGM desired a personal hearing. Enquiry Officer did not receive any response from SGM after this communication.

10. Enquiry Officer had provided an opportunity of personal hearing on 24th February 2004 to SGM, which was intimated by Enquiry Officer to SGM vide letter dated 30th January 2004. Neither SGM nor of any his representative appeared for the personal hearing before the Enquiry Officer.
11. SGM, vide letter dated 20th February 2004, requested Enquiry Officer to postpone personal hearing. Accordingly, I note that on 5th March 2004, Enquiry Officer had scheduled second opportunity of personal hearing for SGM, which was communicated to SGM vide letter dated 25th February 2004. On 5th March 2004, Enquiry Officer received a letter dated 5th March 2004, stating that Sri Shrikant G Mantri was suffering from severe back ache and hence would not be able to attend the personal hearing before Enquiry Officer and requested for another date.
12. Subsequently, SGM, vide letter dated 18th March 2004, submitted a reply to the show cause notice and once again sought for a personal hearing. Enquiry Officer, in view of SGM not responding to the show cause notice in time and not attending the hearing, did not oblige the request of personal hearing.
13. Thereafter, the Enquiry Officer, after taking into consideration submissions made by SGM vide letter 18th March 2004, submitted his report dated 31st March 2004 to SEBI, recommending a minor penalty of suspension of certificate of registration of SGM for a period of three months. Enquiry Officer in his report pointed out that the medical certificate produced was dated 1st March, 2004 suggesting SGM to rest till 20th March 2004. This was only submitted to Enquiry Officer on the date of hearing, 5th March 2004. Enquiry Officer had opined that if SGM intended to co-operate with Enquiry Officer, the medical certificate could have been brought on record when it was given, rather than waiting till the hearing date.

SHOW CAUSE NOTICE AND REPLY

14. On receipt of the enquiry report, a show cause notice dated 2nd April 2004 was issued to SGM, along with a copy of the enquiry report, advising SGM to show cause as to why penalty, as recommended by the Enquiry Officer, should not be imposed on him. SGM, vide letter dated 30th April 2004, sought permission to submit his reply by 15th May 2004, which was granted and intimated to SGM vide letter dated 12th May 2004.
15. SGM, vide letter dated 12th May 2004, replied to the said show cause notice inter-alia submitting as follows and sought for an opportunity of personal hearing

"SGM denied that it had not co-operated with Enquiry Officer. SGM submitted that RNJ had only acted as his client and not as a sub-broker, as alleged by SEBI. SGM submitted that he had a broker-client agreement with RNJ which would have been a broker-sub-broker agreement had RNJ been a sub-broker and not a client. SGM requested SEBI to dismiss the show cause notice in view of the fact that he had not violated any rules, regulations of SEBI Act."

CONSIDERATION OF ISSUES AND FINDINGS

16. I have considered the facts of the case, the findings of the Enquiry Officer, the reply of SGM to the show cause notice and other material on record. My findings with respect to the allegations against SGM are as under.
17. I note that SGM had, at every stage during the Enquiry proceedings, sought for time and postponement, to submit reply, to appear before Enquiry Officer, and the reasons given were not always justifiable, despite which Enquiry Officer had given him time and opportunity to present his case, of which SGM had not made proper use.
18. Further, SGM had even sought time in the proceedings before me, to file a reply to show cause notice. Even after being given time for the same, SGM had not submitted a reply with any supporting documents and had only generally denied the charges. Mere denial without any substantiation is not acceptable. In view of the conduct of SGM, I have not considered it fit to grant a personal hearing as requested by SGM.
19. The details of trading done by SGM, on behalf of RNJ are as follows

Settlement date	Purchases	Sales	Gross	Net
22.11.1999	0	43500	43500	-43500
30.11.1999	0	28600	28600	-28600
22.11.1999	0	30000	30000	-30000
Total	0	102100	102100	-102100

20. Details of orders placed by SGM are as under

Broker	Buy / Sell	Rate	Qty	Discl		Date	Time	Ord 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	24.55	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	R0038
738	B	22.7	25000	2500	A	03.12.99	11:01:09	738040406	R0038

21. SGM had accepted that he had dealt as above, for and on behalf of his "client" RNJ. SGM had submitted that he had dealt for RNJ as a client only and not as a sub-broker and that all the transactions were settled with RNJ and not with any third party. He further stated that the orders mentioned above were placed at the then prevailing rates at BSE and hence he did not have any reason to question the reason or the validity of the orders. He further sought cross examination of RNJ.
22. Investigations have established that RNJ was one of the entities responsible for the sudden price rise in the scrip, along with Shri Mahendra Shah. RNJ had put in large buy orders to influence the price of the scrip and had also created artificial/false appearance of demand/interest in the scrip. RNJ, in its statement to SEBI, had admitted to acting in the manner of a sub-broker to SGM, having traded through SGM for Shri Shah, who was acting as a front for the promoters of SFL.
23. As regards the contention of SGM that he was acting on the instruction of RNJ, its "client", I note that RNJ is a member of ASE and hence has its own set of clients. Moreover, the huge volumes of transaction done by RNJ in an illiquid scrip should have alerted SGM to examine whether RNJ was acting as a client or as a sub-broker, dealing for its own clients. I find that SGM, having failed to notice that RNJ was acting as a sub-broker, trading on behalf of other clients, had dealt with an un-registered sub-broker and has thus failed to exercise proper skill and diligence, thereby violating Clause A(2) of the Code of Conduct for Stock Brokers.
24. SGM had submitted that it should have been allowed to cross examine RNJ to prove that RNJ was a client to SGM and not a sub-broker. Cross examination is neither a practice nor a right of parties against whom enquiry is being conducted. It is the discretion of the Enquiry Officer whether to give such an opportunity to the party or not, depending on the circumstances of the each case. SGM can not on this ground claim that principles of natural justice were not followed. The submission of SGM is not acceptable.
25. As regards the allegation regarding violation of FUTP Regulations, I have observed that SGM was a major seller in the shares of SFL. SGM had also put large orders in the system, as mentioned at para 20 above. As mentioned above and as admitted by SGM, all the transactions and orders in SFL during the relevant period were on behalf of RNJ, who had dealt for Shri Shah, who was one of the main persons responsible for the manipulation in the shares of SFL. I have also observed that a major portion of the sales of Shri Shah were concentrated through SGM.
26. In view of the above, I find that SGM, by placing orders and transacting on behalf of RNJ, had facilitated, aided and abetted RNJ and the ultimate client, Shri Shah, in creation of false market in the scrip and in price manipulation. Having dealt in this manner and with such clients, SGM has violated the provisions of Regulation 4 (a) and (b) of FUTP Regulations.
27. In view of the above, I am inclined to accept the recommendation of the Enquiry Officer.

ORDER

28. Therefore, in terms of Section 19 of the Securities and Exchange Board of India Act, 1992, read with regulation 13(4) of Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, I hereby impose a penalty of suspension of registration of certificate of Shri Shrikant G Mantri, member, BSE, for a period of three months.
29. This order shall come into effect on expiry of three weeks from the date of this order.

Place: Mumbai

Date: October 6th, 2004

A K Batra

Whole Time Member

Securities and Exchange Board of India