

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 M/S MS CONSULTANCY, SUB-BROKER TO M/S ACME SHARES AND STOCKS PVT. LTD., MEMBER, BSE, IN THE MATTER OF 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. Further investigations revealed that M S Consultancy (hereinafter referred to as 'MSC'), sub-broker to M/s Acme Shares and Stocks Pvt. Ltd., member, BSE, had dealt in the scrip for its client Sri Viraj Gandhi, details of which are as follows

Settlement no	Purchases	Sales	Gross	Net
35	200	200	400	0
36	2500	27700	30200	-25200
37	14700	18000	32700	-3300
40	0	500	500	-500
Total	17400	46400	63800	-29000

5. In order to ascertain the details of the above transactions and also to determine the role of MSC/its client in the price manipulation of the shares of SFL, summons were issued by the Investigating Authority, advising them to appear before the Authority. However, neither MSC nor its representative respond to the summons issued by SEBI nor appeared before the investigating authority, an act that is in violation of the Code of Conduct as prescribed under Schedule II read with regulation 15 of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as "Broker Regulations").

ENQUIRY PROCEEDINGS

6. 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 MSC.
7. 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 MSC dated 9th December 2003, advising them to show cause as to why action should not initiated for violation of FUTP Regulations and Code of Conduct of Broker Regulations. MSC did not respond to the said show cause notice.
8. Enquiry Officer had provided an opportunity of personal hearing on 24th February 2004, which was intimated to MSC vide letter dated 30th January 2004. Neither MSC nor of any its representative appeared for the same. I note that on 5th March 2004, Enquiry Officer had scheduled second opportunity of personal hearing for MSC, which was communicated to MSC vide letter dated 24th February 2004, on which date Shri Mahendra S Thakkar, the authorized representative of MSC attended the hearing and made his submissions. He inter alia submitted as follows :
 - i. MSC had not responded to the summons of the investigating authority as they were under the impression that the summonses were for Sawaca Communications (another case being investigated by SEBI) and it may not be necessary to appear separately for Sawaca Finance.

- ii. The trading of Viraj Gandhi was delivery based.
9. The Enquiry Officer, after considering the submissions of MSC, submitted his report dated 31st March 2004, with the recommendation that a minor penalty of suspension of certificate of registration for a period of three months be imposed on MSC..

SHOW CAUSE NOTICE AND REPLY

10. On receipt of the enquiry report, a show cause notice dated 5th April 2004 was issued to MSC along with a copy of the enquiry report, advising them to show cause as to why penalty, as recommended by Enquiry Officer, should not imposed on them. On 27th April 2004, MSC replied to the said show cause notice inter alia submitting as follows and sought for an opportunity of personal hearing.
- MSC contended that there has been a delay of three years after investigation and hence the proceedings are barred by limitation. MSC pointed out that Enquiry Officer had relied on full investigation report, a copy which was not provided to MSC and that issuance of a show cause notice based on that enquiry report is against fair play, equity and natural justice.
 - MSC submitted that the concerned trades were done as per the instructions of its client, Viraj, at relevant time on certain days in some settlements though not continuously and through out the period. MSC further submitted that these trades were done at a price of Rs. 20/- and financial implications of these trades was quite miniscule. Also that these trades were done on the BOLT screen and were delivery based. MSC submitted that there was neither mensrea nor ulterior motive while dealing in the scrip. MSC added that barring one settlement, all others were delivery based transactions and that there were no large purchases and sales made.
 - MSC submitted that the said client was known to them for a long time and had never defaulted in its financial obligations. It was also submitted that MSC had considered the credibility of client, track record in meeting their financial commitments, financial resources, overall conduct and their volume of trading in SFL. MSC submitted that client's portfolio had to be seen as a whole and not by singling out trading in particular scrip.
 - With regard to non-appearance before investigating authority, MSC submitted that since there was investigation going in both SFL and Sawaca Communications Ltd and the fact that statement of Acme was recorded by investigation authority for both scrips together, MSC was under the impression that the requisite information had been given by Acme and MSC need not be provided the same again. MSC added that it had provided information sought by investigation authority though there might have been a little delay. MSC submitted that a misunderstanding can not be attributed to not having shown due skill, care and diligence.
 - MSC pointed out that Enquiry Officer's observation that MSC and its client Sri Viraj Gandhi had considerable role in the manipulation of SFL, was not supported by any evidence.
 - MSC also submitted that the penalty recommended by Enquiry Officer was too harsh and disproportionate to the alleged violation. Further, MSC submitted that major penalty under 13(6) of the Regulation can be imposed under the circumstances set out therein and hence, the same can not be applied to the instant case.
 - MSC denied that there was any market manipulation on their part, by way of assisting in such manipulation. In view of the transactions being delivery based and small in quantity, their trades could not have manipulated the market.
 - MSC contended that SEBI did not have the power to suspend the certificate of registration by way of penalty under section 24 of the Securities and Exchange Board of India Act, 1992.
 - In view of the above submissions, MSC requested SEBI not to impose penalty as recommended by Enquiry Officer.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have considered the facts of the case, the findings of the Enquiry Officer, the reply of the sub-broker to the show cause notice and other material on record. My findings with respect to the allegations against MSC are as under.
12. I note that the main charge against MSC is its failure to respond to the summonses issued by the investigating authority, seeking to ascertain the facts of the case and the details of the trades done by MSC in SFL. The failure of MSC and its client, who had traded significantly in the shares of SFL, hampered the investigation process of SEBI. In addition, I have also observed that MSC failed to respond to the show cause notice issued by the Enquiry Officer. It also failed to appear before the Enquiry Officer for the first hearing opportunity granted to them.
13. In response to this allegation, MSC has submitted that they were under the mistaken notion that the summonses issued were regarding Sawaca Communications, another case in which their involvement was being investigated by SEBI. I do not find any merit in the said submissions of MSC. A case of mistaken notion can be accepted in one or two instances. As stated

above, MSC had repeatedly failed to respond to the summons issued or the show cause notices sent to them. Even assuming they were not clear about the summons/show cause notices, the least they could have done was seek clarifications with respect to the documents from the investigating authority/Enquiry Officer.

14. MSC, being a registered sub-broker with SEBI, has a responsibility to co-operate with SEBI. In the instant case, despite the claims of MSC to the contrary, I am convinced that MSC had willfully failed to respond to the correspondence from SEBI. The instances of non-response are too numerous to be explained away as "mistaken impressions". Hence, I hold MSC guilty of the having violated the provisions of the Code of Conduct prescribed for Sub-brokers under the Broker Regulations.
15. MSC had contended that Enquiry Officer had not established market manipulation in case of its client Sri Viraj Gandhi and as such the charge of aiding and abetting market manipulation against MSC does not arise. As mentioned at Para 2 above, there was unusual price and volume movement in the scrip of SFL during October-December, 1999. MSC, on behalf of Shri Viraj Gandhi, had purchased 17,400 shares and sold 46,400 shares of SFL, being a significant portion of the shares traded during the relevant period. In order to look into the role of Shri Viraj Gandhi in the manipulations observed in the shares of SFL, the investigating authority had called for information from MSC, which MSC failed to provide. On account of the said non-cooperation of MSC, the investigation process of SEBI was seriously hampered. The fact that investigations have not been able to bring out the role of Shri Viraj Gandhi, if any, in the manipulations is largely due to non-submission of information by MSC/its client and the failure of MSC to co-operate in the investigation process.
16. I note that MSC has contended that conditions under regulation 13 (6) of the Regulations are not fulfilled and hence penalty can not be imposed under the same. Penalty recommended by Enquiry Officer is a minor penalty. Hence, MSC's submission of conditions under regulation 13 (6) of the Regulations not being fulfilled is irrelevant. MSC has also contended that SEBI does not have power under section 24 of Securities and Exchange Board of India Act, 1992 to suspend certificate of registration by way of penalty. The same has no relevance to the instant case as the current proceedings are under the Enquiry Regulations.
17. I have also observed that MSC had sought for a personal hearing. I noted that MSC had not made use of opportunities given by both, the investigating authority and the Enquiry Officer. In fact, Enquiry Officer had issued a show cause notice and given an opportunity of personal hearing, even though MSC had not responded to the show cause notice. MSC had not even availed the opportunity of personal hearing despite which Enquiry Officer had granted MSC a second opportunity of personal hearing. I am of the view that MSC has been given enough number of opportunities to present its case, of which it had not made proper use. In view of MSC's behaviour and non-co-operation with both investigating authority and Enquiry Officer, which is a violation in itself, I have not thought it fit to grant yet another opportunity of personal hearing to MSC.
18. MSC submitted that show cause notice was issued after substantial delay and the same is liable to be dismissed in view of the delay. There is no time period prescribed by which SEBI is required to complete its proceedings, as long as it is not stretched beyond reasonable time, which is not the case here. SEBI, as a regulator, has to follow certain procedures while investigating and initiating subsequent proceedings, which consume some time. Hence, this cannot be considered a valid ground to dismiss further proceedings.
19. From the aforesaid discussion, I find that M S Consultancy has violated Code of Conduct as given under Schedule II read with regulation 7 of Securities and Exchange Board of India (Stockbrokers and sub-brokers) Regulations, 1992 and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair trade practices relating to securities market) Regulations, 1995, in having repeatedly and deliberately failed to respond to the summons and notices issued to them. As already stated above, I do not find adequate merit in their submissions regarding mistaken impression. As regards the penal action recommended by the Enquiry Officer, I find no reason to deviate from the same as I consider non-cooperation of a registered entity with the investigation process of SEBI to be a serious offence, not to be taken lightly. However, taking an overall view, I am of the opinion that suspension of certificate of registration for a period of one month would meet the ends of justice.

ORDER

20. Therefore, in exercise of powers conferred upon me 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 M S Consultancy Services, sub-broker to Acme Shares and Stocks Pvt. Ltd., member, BSE for a period of one month.
21. This order shall come into effect after the 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

