

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 RAMANLAL D SHAH, 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. Ramanlal D Shah (hereinafter referred to as "RDS"), a member of BSE, had traded in the scrip on behalf of Mayekar Investments Pvt Ltd. (hereinafter referred to as "MIPL"), 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 MIPL was not registered with RDS as sub-broker, even though MIPL was trading through RDS for and on behalf of its client, Sri Mahendra A Shah. MIPL was registered by RDS as its sub-broker only in May, 2000. Therefore, during the relevant period, RDS was trading with an un-registered sub-broker. Hence, it was alleged that RDS had failed to exercise due care, skill and diligence and had therefore violated the provisions of Code of Conduct prescribed for Stock Brokers, laid down in Schedule II to Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.
5. In addition, it was also alleged that RDS had aided and abetted MIPL and Shri Mahendra Shah, in creation of a false market in the shares of SFL, thereby violating the provisions Regulations 4(a), (b) and (d) 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").

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 inquire into the alleged violations committed by RDS.
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"), Enquiry Officer issued a show cause notice to RDS dated 25th November 2003, along with a copy of facts, findings and allegations arising out of SEBI investigations, advising RDS to show cause as why action should not be taken against it for violation of FUTP Regulations and Code of Conduct for Stock Brokers. RDS, vide letter dated 9th December 2003, responded to the said show cause notice.
8. Thereafter, having provided an opportunity of personal hearing to RDS on 27th January 2004, in which Shri Ketan K Shah represented RDS and made submissions, the Enquiry Officer submitted his report dated 17th February 2004 to SEBI, with the recommendation that a minor penalty of warning be imposed on RDS.

SHOW CAUSE NOTICE AND REPLY

9. Subsequent to receipt of the enquiry report, a show cause notice dated 9th March 2004 was issued to RDS, along with a copy of the enquiry report, advising them to show cause as to why the penalty as recommended by Enquiry Officer should

not imposed on them. RDS, vide letter dated 25th March 2004, responded to the said show cause notice inter alia submitting as follows:

- 9.1 RDS submitted that the trades done one behalf of MIPL, in SFL, were executed through four orders in one settlement only. These trades were delivery based and were in the normal and ordinary course of business, the volume of which was miniscule in comparison to their then prevailing volume of transactions. It was also submitted that there were no proprietary trades in this scrip during the investigation period.
- 9.2 In addition to the above, RDS, in its support, quoted the Enquiry Officer's observation that it would be difficult to accept the allegation against RDS of having violated the FUTP Regulations merely because RDS had transacted in the scrip during the relevant time. Accordingly, RDS submitted that it had not violated the FUTP Regulations and pointed out that even the Enquiry Officer did not find them guilty of having violated the same.
- 9.3 With regard to the violation of SEBI Circulars regarding dealing with unregistered sub-brokers, RDS submitted that the said trades were for a limited period and hence, have to be considered as a technical violation. Further, RDS submitted that Enquiry Officer in his report had also concurred with its submissions.
- 9.4 In view of the above submissions and findings of Enquiry Officer, RDS requested SEBI to exonerate it from the charges and not impose even minor penalty of warning on it, as recommended by the Enquiry Officer.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have considered the facts of the case, the findings of the Enquiry Officer, the reply of RDS to the show cause notice and other material on record. My findings with respect to the allegations against RDS are as under.
10. I have observed that RDS had traded in the shares of SFL, for and on behalf of MIPL, as under :

Sett no.	Purchases	Sales	Gross	Net
39	16100	0	16100	16100
TOTAL	16100	0	16100	16100

11. Thus, RDS had traded in the shares of SFL, for MIPL, on only one settlement, wherein a total of 16,100 shares were trades through 4 orders, all on one day. These trades had resulted in delivery of the concerned shares. I have noted the submissions of the broker that they had a daily turnover of approximately 10-15 crores during the said period, as against which the transaction in the shares of SFL was to the tune of Rs. 4 lacs only, owing to which they had no occasion to suspect the intention of MIPL or the fact that irregular trades had been executed by MIPL.
12. In view of the above, particularly the facts that RDS had no proprietary trading in the shares of SFL, that they had traded in only 16,100 shares, that too on a single day, through a total of 4 orders, all of which resulted in delivery of shares, that no case has been made out regarding any connection between RDS and the entities involved in manipulation of the shares, I would like to give a benefit of doubt to RDS, as regards the allegation of having aided and abetted MIPL in having manipulated the shares price and thus having violated the FUTP Regulations.
13. As regards the allegation that RDS had transacted with a sub-broker (MIPL) who was not registered as sub-broker with it, I find that MIPL was registered as a sub-broker to RDS only with effect from May, 2000. However, RDS was dealing with MIPL even before this period. Clearly RDS was dealing with an un-registered sub-broker, for the period before May, 2000. However, considering that RDS had applied for registration of MIPL as a sub-broker much before the investigation period and that the application was being considered by SEBI during the relevant period, the said violation is being considered to be technical in nature. However, the fact remains that RDS had acted for an un-registered sub-broker, despite the provisions of the SEBI (Stock Brokers and Sub-Brokers) Rule 1992, which clearly specify that no sub broker shall buy, sell, deal in securities, unless he holds a certificate granted by the Board under the Regulations.

ORDER

14. 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 warning on M/s Ramanlal D Shah, member, BSE and direct it to be more diligent in complying with Securities and Exchange Board of India Act, Rules, and Regulations framed there under. I also direct M/s Ramanlal D Shah to note that any instances of violations or non-compliance of Securities and Exchange Board of India Act, Rules, and Regulations framed there under, in future, shall be dealt with more stringently.

Place: Mumbai

A K Batra

Date: October 6th, 2004

Whole Time Member

