

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

ORDER UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.

AGAINST B.M. GANDHI SECURITIES PVT LTD, MEMBER, THE STOCK EXCHANGE, MUMBAI, IN THE MATTER OF SAWACA BUSINESS MACHINES LTD. (FORMERLY KNOWN AS SAWACA FINANCE LIMITED)

BACKGROUND

1. M/s. B.M. Gandhi Securities Pvt. Ltd is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a stock broker and is a member of The Stock Exchange, Mumbai. An enquiry officer was appointed vide Order dated 24.07.2003 to conduct an enquiry into its dealings in the scrip of M/s. Sawaca Finance Limited (hereinafter referred to as 'SFL') and possible violations of the provisions of the SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992 (hereinafter referred to as 'the said Regulations') and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as "the PFUTP Regulations") and Rules, Bye laws and Regulations of the Stock Exchange, Mumbai.
2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had 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, had gone 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. One such broker was M/s B M Gandhi Securities Pvt. Ltd. (hereinafter referred to as 'BMG'), who had dealt on behalf of its sub-broker M/s Harvic Management Services Ltd., who had in turn dealt with Shri Mahendra Shah. It was alleged that:
 - i. BMG, in having traded on behalf of its sub-broker M/s Harvic Management Services (I) Ltd (hereinafter referred to as 'HMS'), who had in turn traded on behalf of Shri Mahendra A. Shah, had failed to exercise proper skill care and diligence. Thus, BMG had violated the provisions of the code of conduct i.e. Clause A (2) of the Code of Conduct for Stock Brokers as mentioned in Schedule II under Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations-1992.
 - ii. Further, BMG had acted in unbusiness like manner and had aided and abetted its sub-broker, HMS and the ultimate client,

Shri Mahendra Shah, in the price manipulation of the scrip. By dealing with such ultimate clients, BMG was guilty of violating the provisions of Regulation 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.

ENQUIRY PROCEEDINGS

5. In view of the above, SEBI had appointed an Enquiry Officer, as stated at para 1 above. The enquiry officer, after conducting an enquiry as per the procedure laid down under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 submitted a report dated 19.03.2004 and recommended that a minor penalty of warning be issued to the Stock Broker.

SHOW CAUSE NOTICE

6. On receipt of the Enquiry report, a show cause notice dated 25.03.04 was issued to BMG, advising them to show cause as to why appropriate penalty should not be imposed on them. BMG did not file any reply to the said show cause notice.

ASSESSMENT OF ISSUES AND FINDINGS

7. I have carefully considered the facts of the case, the findings of the Enquiry Officer, the submissions of BMG and other material on record. My findings with respect to the allegations against BMG are as under.

8. The details of trading done by BMG on behalf of HMS are as under:

Sett. No.	Purchases	Sales	Gross	Net
32	0	200	200	-200
35	200	8,900	9,100	-8,700
36	600	100	700	500
37	1,300	2,400	3,700	-1,100
38	20,300	20,300	40,600	0
39	500	600	1,100	-100
40	3,100	2,700	5,800	400
41	100	0	100	100
TOTAL	26,100	35,200	61,300	-9,100

9. In addition, BMG had put large orders in the system of BSE on behalf of HMS on several occasions as under:

Broker	Ter	B/S	Rate	Qty	Disclosed	Ad ded /Del	Date	Time	Client
73	10	B	10	30500	30500	A	01-11-99	12:42:34	1007
73	10	B	12.5	20000	20000	A	18-11-99	10:21:59	1007
73	10	B	12.4	20000	20000	A	18-11-99	10:22:06	1007
73	10	B	12.45	0	20000	U	18-11-99	10:24:37	1007
73	10	B	0	20000	20000	D	18-11-99	14:28:31	
73	10	S	12.45	10000	10000	A	18-11-99	14:31:21	1007
73	10	S	24	1500	1500	A	06-12-99	10:19:09	1007
73	10	S	26.45	1200	1200	A	06-12-99	10:21:16	1007
73	10	B	26.45	9600	9600	A	06-12-99	14:44:26	1007

10. HMS had traded in the scrip of SFL, as above, for Shri Mahendra Shah. In addition, it was seen that HMS was also one of the entities responsible for the sudden price rise in the scrip during the period under consideration, along with Mayekar Investment and Shri Mahendra Shah himself. HMS has

put in large buy orders to influence the price of the scrip and also created artificial/false appearance of market in the scrip.

11. As stated above at para 3, Shri Mahendra A. Shah, the ultimate client of BMG, was the largest seller in the scrip of SFL. Shri Mahendra A. Shah had created artificial volumes through HMS and Mayekar Investment and at the same time offloaded the shares through M/s Rajesh N. Jhaveri and others. While indulging in such trades, Shri Mahendra A. Shah had dealt with several different brokers/sub-brokers of BSE, one of them being HMS, acting through BMG. Shri Mahendra A. Shah had given huge orders to different brokers/sub-brokers, thereby creating artificial volume in the scrip. SFL was more or less dormant till September 1999 and volumes had started picking up only when Shri Mahendra A. Shah and others (Harvic Management, Mayekar Investments etc.) had started trading in the scrip.
12. In its submission, BMG had stated that they did not have any knowledge of the fact that their ultimate client was Shri Mahendra Shah and that he was involved in creation of artificial volumes in the scrip. It was also submitted that BMG had allotted an exclusive terminal to HMS and the transactions effected through the said terminal came to the notice of BMG only after the conclusion of the transaction. It was further submitted that throughout the course of business HMS had performed all its pay-in and pay-out obligations quite sincerely and till date BMG had no grievances of any nature against HMS.
13. BMG, being a broker, is responsible for all acts and deeds of HMS, its sub-broker. I find the submissions of BMG, as regards the transactions of HMS, difficult to accept. Having provided HMS with an exclusive terminal, BMG should also have ensured proper checks and balances to oversee and control the exposure of the sub-broker. The responsibility of a broker is more than that of just meeting the pay-in and pay-out obligations. BMG

should have been more diligent and should have exercised proper skill with respect to the transactions done by its sub-broker.

14. However, I have also observed that during the period under consideration, apart from the transactions of HMS, BMG had traded for other clients, in SFL, only to the extent 500 shares (gross volume). Further, there is no allegation that BMG has done proprietary trading in the scrip of SFL. I have also observed from the submissions of BMG that during the Financial year 1999-2000, the gross turnover of BMG was Rs. 4510.6 crores, as against which the turnover of HMS was only Rs. 69.03 crores, of which the volumes of SFL were Rs.14.94 lakhs, which does not appear to be very significant when compared with the gross volume of BNG. Hence, I do not find that a case has been made out regarding BMG having had any interest in the trading in SFL, other than that of earning legitimate brokerage.
15. Keeping the above factors into consideration, I do not concur with the allegation that BMG had aided and abetted HMS and Shri Mahendra Shah and thus, violated the provisions of Regulation 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.
16. Thus, taking all factors into consideration, including the submissions of BMG, I find that the allegations made against BMG are not proved to such an extent that BMG deserves to be punished by way of suspension or cancellation of registration. At the same time, BMG ought to have exercised caution and diligence in overseeing the trading of its sub-broker, instead of merely letting the sub-broker trade in an illiquid scrip over an extended period of time, an act which resulted in creation of artificial volumes.

17. In view of the above, I do not see any valid reason to differ with the findings of the enquiry officer. I am satisfied that it is necessary, in order to secure the proper management of the stock broker and also in the interest of the securities market, to impose a minor penalty of warning on BMG and that it would meet the ends of justice.

ORDER

18. Therefore, in exercise of the powers conferred upon me by virtue of Section 19, read with Regulation 13(4) of SEBI (Procedure For Holding Enquiry By Enquiry Officer And Imposing Penalty) Regulations, 2002, I hereby pass an order issuing a warning to M/s B.M. Gandhi Securities Pvt Ltd, to the effect that the Stock Broker should be careful in future and exercise due care and diligence in the conduct of its affairs as a capital market intermediary. I also direct the broker to note that any instances of violations or non-compliance of the Securities and Exchange Board of India Act and the Rules and Regulations, in future, shall be dealt with more stringently.

Place: Mumbai	A K Batra
Date: October 15, 2004	Whole Time Member Securities and Exchange Board of India