

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Regulation 13 (4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 read with Section 4(3) of the Securities and Exchange Board of India Act, 1992 against M/s Punjab National Bank representing the erstwhile PNB Capital Services Limited

1.0 **Background**

PNB Capital Services Limited (hereinafter referred to as the "PNBCSL") was a Merchant Banker registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI"). PNBCSL was merged with Punjab National Bank (hereinafter referred to as "PNB") vide order of the High Court of Delhi dated 25.8.2003 and thereby PNB has taken over all assets and liabilities of PNBCSL and is responsible for all the acts of commission and omission by PNBCSL.

Mefcom Capital Markets Limited (hereinafter referred to as "MCML") is a Non Banking Finance Company which is into investments, hire purchases and leasing and Merchant Banking activities. MCML came out with a Rights-cum-public issue in February 1995. The rights issue was for 50 lakh shares of Rs.10/- each at par in the ratio of 1:5 aggregating to Rs.5 crores. The public issue was for 21.20 lakh shares at a premium of Rs.60/- per share aggregating to Rs.14.84 crores alongwith detachable trade warrants in the ratio of 1: 4. The Rights component of the issue was open between 4.2.1995 and 4.3.1995 and the public component of the issue was open between 1st and 4th February, 1995.

SEBI received complaints regarding price rigging in the scrip of MCML prior to the Rights-cum-public issue and initiated an investigation into the matter.

In the course of investigation, it was found that PNBCSL which was the Lead Manager to the issue had failed to exercise due diligence and ensure proper care in discharging their duties. It was found that PNBCSL did not exercise independent professional judgment and relied entirely on the statement of the issuer company regarding justification of premium.

2.0 **Enquiry Proceedings**

In the light of the findings of the investigation report, an enquiry officer was appointed vide order dated 30.4.2003 to enquire into the alleged lack of diligence on the part of PNBCSL. The enquiry officer issued show cause notice to PNBCSL ON 18.8.2003 and received a reply from PNB (into which PNBCSL had merged) vide letter dated 8.12.2003. A personal hearing was also granted by the enquiry officer. After considering the reply and the submissions in the course of personal hearing, the enquiry officer vide report dated 27.2.2004 concluded that charges have been established. He also observed that PNBCSL was no longer a Merchant Banker registered with SEBI and therefore recommended that a minor penalty of warning be issued to them.

3.0 **Show cause notice and hearing**

Show cause notice was issued by Enquiry Officer to PNBCSL on 15.3.2004. Pursuant to this show cause notice a reply dated 23.4.2004 was received from Punjab National Bank (PNB). It was submitted in the said reply that in terms of the orders of the Hon'ble Delhi Court dated 25.8.2003 PNBCSL has merged with PNB and therefore the reply is filed by it.

In the said reply PNB submitted as under:

In terms of SEBI Guidelines existing at the time of issue (Feb. 95) of M/s. Mefcom Capital Markets Ltd the existing listed companies were free to decide on the pricing of the issue. The issue price was determined by the existing listed company in consultation with lead manager (erstwhile PNB Capital Services Ltd) and the lead manager had made full disclosure in accordance with the guidelines to enable the investors to take an informed decision.

The draft prospectus was vetted by SEBI and the justification for recommending a premium of Rs.60/- was disclosed in the offer document in consultation with SEBI and as advised vide SEBI letter IMID/RM/5209/94 dated 28.10.94. Both qualitative and quantitative factors for justification of the premium was disclosed in the offer document at page no.28 in terms of which the shares of the company were traded at a high / low of Rs.4/3 and Rs.3/3 during 91-92 and 92-93 respectively when there were no volumes. Stock price picked up subsequently along with the market sentiments as a result of which the stock traded at Rs.12.25 in January 94 to Rs.150 in February 95. The pricing of the issue and justification of the premium was in terms of Section C of SEBI guidelines dated 29.5.92 for the existing listed companies.

No opportunity of hearing was sought by PNBCSL/PNB and hence none was granted.

4.0 **Consideration of issues**

I have carefully considered the report of the enquiry officer, the reply of PNB and other material on record.

I note that in the prospectus relating to the rights cum public issue, under the head "justification for premium", it was mentioned that the lead manager to the issue in consultation with whom the premium was decided are of the opinion that the premium is reasonable and justified. In this regard, I also note that prior to the issue, the promoter's holding in MCML was around 74% and the floating stock of MCML on DSE was very low. The average daily volume in the scrip on DSE prior to the issue was around 1200 shares. On perusal of the stock market data for the scrip for the years 1991-92 and 1992-93, I note that the highest traded price was Rs.4/- and Rs.3/- respectively. This was against the issue price of Rs.70/- per share. I further note from the data for the months of July to December 1994 that the price increased from Rs.38.50 in July to Rs.178/- in November against low trading volumes. In this regard, PNB has submitted that the stock price picked up subsequently along with market sentiments between January 1994 to February 1995 and therefore the premium was justified. I note that the lead manager has failed to verify the reasons behind the steep rise in price in 1994 despite low volumes being traded. In view of the above, I find that the lead manager i.e. PNB-CSL has failed to exercise due diligence and ensure proper care in discharging their duties as lead manager to the issue. I, therefore, find that they have acted in violation of Clause 2 of the Code of Conduct for Merchant Bankers under Schedule II to the Merchant Bankers Regulations, 1992.

5.0 **Order**

Having regard to the above, I agree with the findings of the Enquiry Officer and the recommendations made by him.

I however note, that PNB-CSL is no longer registered with SEBI as a merchant banker pursuant to its merger with PNB. On perusal of the approved Scheme of Amalgamation and the Order dated 25.8.2003 of the Hon'ble Delhi Court, I find that all the liabilities and duties of transferor (PNB-CSL) have been transferred to the transferee bank. As per the Scheme of Amalgamation all pending proceedings, by or against the transferor company, shall be continued by or against the transferee company. In view of this, the transferee company, viz., PNB shall be liable for any violation committed by the transferor company i.e., erstwhile PNB-CSL. I accordingly censure Punjab National Bank for violation of code of conduct by the erstwhile PNB Capital Services Limited (as a merchant Banker) which has since amalgamated with Punjab National Bank pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court u/s 391-394 of the Companies Act, 1956.

Date: February 18, 2005

Place: Mumbai

G.N. Bajpai

Chairman

Securities and Exchange Board of India