

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. T. C. NAIR, WHOLE TIME MEMBER

WTM/TCN/ 53/11/IVD/06/

DATE OF HEARING: August 11, 2006

APPEARANCE :

FOR NOTICEE : Shri Sudesh Pahl, Assistant

FOR SEBI : Shri P.K.Bindlish , General Manager

ORDER

DIRECTION UNDER SECTION 11B READ WITH SECTION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST M/S. WORLD LINK FINANCE LIMITED IN THE MATTER OF BARODA AGRO INDUSTRIES LTD.

1.0 Background

1.1 Baroda Agro Industries Limited (hereinafter referred to as BAIL) had made private placement of shares in the year 1992, and had applied to the Controller of Capital Issues (hereinafter referred to as "CCI") for the permission to come out with public issue.

1.2 In the meantime, CCI was repealed and SEBI was constituted. BAIL had made a fresh application to SEBI for coming out with a public issue and approval for the same was granted on November 19, 1993. Consequently, BAIL came out with a public issue of 27,00,000 Equity shares of Rs. 10/- at par which opened on March 17, 1994 and closed on March 21, 1994. Out of the issue of 27,00,000 Equity shares offered to public, 6,48,000 shares were reserved for preferential allotment to Non Resident Indians / Persons of Indian Origin residing abroad on repatriation basis.

1.3 SEBI received complaints from some investors as mentioned in the table below regarding market manipulation in the scrip of BAIL.

Name of the Investor	No. of shares sold	Rate	Reason for non delivery	Rate at which purchased in auction	Loss (Rs.)
Kashmira Kadri	200	35	Shares under "lock-in"	79	8800
Navtamlal Sanghvi and Kusum N Sanghvi	500	Not specified	-do-	Not specified	-
Kusum N Sanghvi and Dr. Navtamlal U Sanghvi	500	Not specified	-do-	Not specified	-
Dinesh B Sheth	1000	20	-do-	86	66000
Rajesh M Goyal	300	22	-do-	87	19500

1.4 It was alleged that group of brokers were acting in collusion with the management of the company in rigging up the share price. Further, it was stated by the complainants that they had sold their shares in the market and given deliveries, but the same were returned by the stock exchange as "bad deliveries". These shares were declared as "bad deliveries on the ground that the said shares were "non-transferable" as they were from promoter's quota and were subject to "lock-in". The investors stated that they had purchased the said shares in 1992 on a firm allotment basis and at the time of sale they were told that the shares will be freely tradable and transferable once the company came out with public issue in 1994 and the shares of the company were listed on the Bombay Stock Exchanges. The company came out with the public issue in 1994 and the shares of the company were listed on BSE which gave trading permission with effect from August 30, 1994. The complaining investors had sold their shares in the month of March-April'96.

2.0 Findings

2.1 In view of these complaints, SEBI conducted an investigation which revealed that shares which were issued / given on private placement basis in 1992 did not have the stamp of "non transferable" on the face of share certificates. It was also noticed that investors to whom the private placement was made were not informed regarding the restriction on the transfer of their shares.

2.2 It was found that certain distinctive number of shares were notified as belonging to the promoter's quota and were under the category of "non transferable". The notice issued by BSE also stated that shares issued on private placement basis in 1994 did not have stamp of "non transferable" on the face of the certificates. It was also observed that BAIL had issued an undertaking to the BSE that it would take necessary steps to ensure that non transferable share certificates which have not

been enforced with an enforcement regarding their non transferability would not be sold in the market and that the company would send a circular to all the shareholders individually containing distinctive numbers of all the shares which are non transferable. BAIL also gave an undertaking to the BSE that if, in spite of this, such non-transferable shares happened to be sold in the market, the company shall take responsibility of transferring such shares in the name of bonafide purchaser or arrange for replacing them with other transferable shares.

- 2.3 From the various complaints received by SEBI, it was found that BAIL did not inform its investors about the 'lock-in' period despite having given assurance to the exchange to that effect. As a result of this, when the investors sold the shares in the market in good faith the same were returned to them as bad deliveries for no fault of theirs. The investors who had sold these shares were therefore forced to pick up shares in the auctions at much higher prices to give delivery for their obligations. As the price of the scrip of BAIL was moving upward during the same period, the sellers suffered huge financial losses. M/s World Link Finance Ltd. (hereinafter referred to as Lead Manager) acted as one of the Lead Managers to the issue. It was found that the Lead Manager failed to exercise due diligence and care in ascertaining the status of the shares issued under the promoter's quota, mis-reporting the same in the prospectus and have mis-reported about the extent of subscription and the subsequent issue of shares and thereby violated Regulation 13 (2) of the SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as the Merchant Bankers Regulations).

3.0 Show Cause Notice and Hearing

- 3.1 A show cause notice dated February 18, 2003 was issued under Section 11B of SEBI Act, 1992 asking the Lead Manager and its directors to show cause as to why suitable directions, including directions for debarring the Lead Manager and their directors from associating themselves with any of the activities in the capital market for a suitable period, as deemed fit, should not be issued.
- 3.2 The said show cause notice had been sent by registered post but the same came back undelivered. Therefore, the said show cause notices had been pasted on the last known address of the entity. Subsequently, an opportunity of hearing before the Chairman, SEBI was granted to Lead Manager on May 15, 2003 and before Member, SEBI on October 10, 2003. The hearing notices were pasted on the last known address of the Lead Manager. However on both the occasions the Lead Managers failed to appear.
- 3.3 Efforts were taken by SEBI, in the meantime to trace the correct address of the Lead Manager and subsequently once again a show cause notice dated March 4, 2004 was issued to the lead manager.
- 3.4 A reply dated March 17, 2004 was received from the Lead Manager with the submissions as under:
- a. *The shares in respect of which the complaint had been made were allotted by BAIL on private placement basis. The matter is, therefore, entirely between the BAIL and the investors/ persons to whom the shares were allotted. The Lead Manager had no role to play in the same. If any default has been committed in allotment of these shares it is only the BAIL which is responsible. The Lead Manager has no control over the same nor can be held responsible in respect of any matter relating to the same. The Lead Manager cannot be held responsible in case of any default committed in allotment of these shares.*
 - b. *Since the aforesaid shares did not form part of the public offer made in 1994 in which they acted as Lead Manager, it was not required to show any diligence relating the same nor Lead Manager was required to include the said shares for the purposes of showing public subscription made under offer of 1994. These shares were issued / allotted 2 years before the said public offer on private placement basis and hence were totally independent of the issue of 1994. In fact, Lead Manager was not in the picture at the time of issue / allotment of these shares.*
 - c. *The Lead Manager further stated that BAIL had already taken the responsibility and had given suitable undertaking to the said shareholders which proves that the entire responsibility was on BAIL and that they are not at all concerned or involved in respect of the said shares.*
 - d. *Further, as per Regulation 23 of the SEBI (Merchant Bankers) Regulations, 1992, due diligence report must have been already submitted before the public issue and no defect in the same was pointed out and the same was duly accepted.*

4.0 Personal Hearing

- 4.1 An opportunity of hearing was granted to the Lead Manager before the Whole Time Member on September 1, 2004, wherein Shri Sudesh S Pahl designated as Assistant appeared on behalf of the Lead Managers and made submissions.
- 4.2 A fresh hearing was given to the Lead Manager on August 11, 2006 due to change in the competent authority. Submissions were made by one Shri Sudesh S Pahl designated as Assistant, who attended the said hearing on the above date.

5.0 Consideration of Issues

- 5.1 I have carefully considered the findings of the investigation, show cause notice and submissions made by the Lead Manager. I have noted the main allegation leveled against him that the Lead Manager has failed to exercise due diligence and care on ascertaining the status of the shares issued under the promoters quota, thereby misreporting the same in the prospectus and have misreported about the extent of subscription and the subsequent issue of shares. I have carefully noted the reply of the Lead Manager and observed that it has not replied to the main allegation of misreporting in the prospectus at all. The Lead Manager has not specifically replied to the alleged violation.
- 5.2 I have noted the submission made by the Lead Manager in para (a) and (b) that since the shares were allotted by BAIL on private placement basis, the matter is entirely between BAIL and the investors to whom they were allotted. I cannot accept this contention raised by the Lead Manager as these shares were offered in the 'lock-in' as promoter quota in the prospectus. It is pertinent to note that, it is the responsibility of the Lead Manager to make adequate disclosures in the prospectus. Further I cannot accept the contention of the Lead Manager that it was not required to show due diligence for the same as these shares did not form part of the public offer made in 1994. The issue involved here is that the Lead Manager has not made adequate disclosures regarding the status of shares issued under the promoter's quota whether prior or at the time of public issue in the prospectus. I once again reiterate that it is the responsibility cast upon the Lead Manager to confirm that adequate disclosures / information have been made to the investors. Moreover as per the Merchant Bankers Regulations, the Lead Managers has to issue a Due Diligence Certificate to SEBI in the prescribed format *inter alia* confirming that they have made adequate disclosures in the draft prospectus / letter of offer to enable the investor to make a well informed decision as to the investment in the proposed issue.
- 5.3 As regards the submissions made by the Lead Manager that BAIL had already given an undertaking to the said shareholders and therefore the entire responsibility was on BAIL and that they are not at all concerned or involved in respect of the said shares, I am of the opinion that though the required undertaking was issued by BAIL, the Lead Manager has failed to exercise due diligence and care in ascertaining the status of the shares issued and offered in "lock in" under the promoter's quota at the time when the public offer was made, thereby misreporting the status of shares under promoters quota.
- 5.4 On examination of the material available on record, I find that the Lead Manager has grossly failed to exercise due diligence and care in ascertaining the status of the shares issued under the promoter's quota, mis-reporting the same in the prospectus and have mis-reported about the extent of subscription. I thus find the Due Diligence Certificate submitted by Lead Manager under Regulation 23 of the SEBI (Merchant Bankers) Regulations, 1992 and also the circular issued by SEBI in this regard was not in order to the extent brought out above. I have also considered the fact that the investors were not informed about the non transferable nature of the shares. I find that investors were led to believe that shares could be sold by them after the shares were listed and admitted for trading at the exchange. However, when the investors sold the shares in the market in good faith the same were returned to them as bad deliveries being under lock-in and consequently these investors were forced to pick up shares in the auctions at much higher prices to give delivery for their obligations. As the price of scrip of BAIL was moving upward during the same period, the sellers suffered financial losses.
- 6.2 Thus, the Lead Manager has failed to discharge its duties and has also violated the clause 2 of the Code of Conduct as specified in the Schedule III under Regulation 13 of the SEBI (Merchant Bankers) Regulation, 1992. In view of the expiry of Certificate of Registration of the Lead manager, I feel that it is a fit case for issue of directions under Section 11B read with Section 11 of SEBI Act, 1992 against the Lead manager.
- 6.3 In view of the above, in exercise of powers conferred upon me by Section 19 read with Section 11 and 11B of SEBI Act, 1992, I hereby direct that M/s World Link Finance Ltd., be debarred from dealing in securities or associating with any of the activities in the capital market for a period of three years.

This order shall come into force with immediate effect.

Date :- 02.11.2006

Place :- Mumbai

T.C. NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA