

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V.K CHOPRA, WHOLE TIME MEMBER

ORDER AGAINST M/S PCS INDUSTRIES LTD. UNDER SECTION 11 (4)(b) READ WITH 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF IRREGULARITIES IN THE PUBLIC ISSUE OF MAZDA FABRICS AND PROCESSORS LTD.

DATE OF HEARING 28.11.2006

APPEARANCES

FOR COMPANIES/ BROKERS:

1. Advocate Shri Ankit H Rajput
2. Shri B.J Patel, Company Secretary

FOR SEBI

1. Mrs Barnali Mukherjee, DGM, SEBI
2. Shri Deepesh M.U, Manager, SEBI
3. Shri. Mohamed Rahaz. P.M, Legal Officer, SEBI

ORDER

1.0 BACK GROUND

- 1.1 The Securities and Exchange Board of India (hereinafter referred to in short as SEBI) had conducted an investigation in the scrip of M/s Mazda Fabrics and Processors Ltd. (hereinafter referred to in short as 'MFPL') on observing spurt in the price and volume in the scrip of MFPL, immediately after the public issue. The investigations revealed that the public issue was undersubscribed and the promoters of the MFPL got the public issue bailed out with the help of external financiers. The investigation further revealed that the proceeds of the public issue was routed through front entities created by the promoters of MFPL to repay the financiers with interest and the concerted trading of the aforesaid front entities had resulted in rise in price and volume in the scrip of MFPL.
- 1.2 MFPL had come out with a public issue in the year 1996 for 36,38,300 shares @ Rs 10/- per share at par. The issue opened on March 06, 1996 and closed on March 16, 1996. The equity shares of the company, MFPL were listed on the Stock Exchange Mumbai (BSE) w.e.f. May 29, 1996. M/s PCS Industries Ltd. (hereinafter referred to in short as 'Noticee') was the Registrar to this public issue.
- 1.3 Investigations revealed that the Noticee had a) handed over all the records to the issuer company immediately after the issue without maintaining it for the mandatory three year period, b) assisted the promoters of the company in fulfilling the subscription level by not scrutinising the genuinity of the applications and cheques received towards the public issue and c) allotted the shares with same distinct numbers to different people.
- 1.4 In view of the above, the noticee was found to have violated of Clause 1, 2 and 3 of the Code of Conduct prescribed in Schedule III read with Regulation 13 and regulation 15 of SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993.
- 1.5 The Noticee had made request to SEBI to surrender their registration (INR000000080) with SEBI as Registrar and Share Transfer Agents. SEBI had cancelled the said registration of the entity vide letter No PMD/VA/23196/2002 dated December 5, 2002. Since the Noticee was no more a registered intermediary, SEBI vide Order dated November 18, 2003 initiated the instant proceedings.

2.0 SHOW CAUSE NOTICE

- 2.1 A show cause notice dated June 9, 2004 was issued to the Noticee to show cause as to why suitable directions under section 11(4)(b), 11 and 11B of the SEBI Act including directions to restrain Noticee from dealing in securities for a particular duration and also restrain Noticee from associating with any corporate body in accessing to securities market for a suitable period should not be passed against the Noticee.

3.0 REPLY TO SHOW CAUSE NOTICE

- 3.1 Pursuant to the show cause notice, the noticee submitted its reply dated July 03, 2004. In the said reply the noticee stated that the person who was in charge of the matter is no longer with them and the division has been closed in 2000. They further stated that they do not have any records available with them to show as to why and how the records were handed

over by the person in charge in 1996. Further, they stated that it was not possible to confirm or deny as to how the applications mentioned in show cause notice were accepted since they do not have any information available in the records of the company. They also submitted that they have surrendered their licence as registrars and transfer agents on May 31, 2002 duly approved by SEBI vide its letter dated December 05, 2002.

- 3.2 In the written submission filed by the Noticee on the date of hearing i.e. on November 28, 2006 they raised legal issue of maintainability of the instant proceedings under Section 11 (4) of Securities and Exchange Board of India Act, 1992 as the said Section had come into effect only on October 29, 2002 while the alleged violations were committed in 1996. They have also taken a stand that they were appointed only as registrar to the public issue of MFPL and not as a share transfer agent. Hence, they were not duty bound to maintain any record as per Regulation 14 of SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993. The Noticee was charged for allotment of shares with same distinct numbers to different people. Noticee in its aforesaid written submission dated November 28, 2003 contented that the evidence relied on by SEBI in this regard was only a hand written document obtained from the company MFPL and not return of allotment. They further stated that there could have been errors while making such a list.

4.0 HEARING

- 4.1 In the said reply dated July 03, 2004 the noticee requested for a personal hearing which was granted. Accordingly the noticee attended the hearing on November 28, 2006 before me. The authorised representative of noticee Shri Ankit H Rajput, Advocate along with Shri B.J Patel, Company Secretary of the noticee attended the hearing and reiterated the submissions which had already made in its reply to the show cause notice. They have also filed a written submission dated November 28, 2006.

5.0 CONSIDERATION OF ISSUES

- 5.1 I have carefully considered the show cause notice, reply and submissions of the representatives of Noticee.
- 5.2 During the course of hearing in the matter, the representative of Noticee has raised a legal point regarding the maintainability of the instant proceedings under Section 11 (4) of Securities and Exchange Board of India Act, 1992 as the said Section had come into effect only on October 29, 2002 while the alleged violations were committed in 1996. The said stand was reiterated in their written submissions made on the date of hearing. I feel that the provisions of Section 11 (4) inserted into SEBI Act, 1992 with effect from 29.10.02 is only an explanation or elucidation of the powers vested in SEBI under Section 11 of SEBI Act. Consequently, the power to take action under Section 11 (4) was already vested with SEBI under Section 11 of the SEBI Act and the action taken pursuant to the Show Cause Notice issued under Section 11 (4) would be valid. Hence, I am proceeding in the matter on the basis of the materials on record.
- 5.3 The Noticee has also contented during the hearing that they were only appointed as a Registrar to the Public Issue and not as a Share Transfer Agent. Hence they were not duty bound to maintain any record as per Regulation 14 of SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993. In this context, I have examined the relevant provisions of the aforesaid Regulations. The activities of Registrar to an issue have been specified in rule 2(e) of the Securities & Exchange Board of India (Registrar to an Issue and Share Transfer Agents) Rules, 1993. The activities of a Registrar to an Issue are inter alia to (i) collecting applications from investors in respect of an issue (ii) keeping a proper record of applications and monies received from investors or paid to seller of the securities; and (iii) assisting body corporate or person / group of persons in determining the basis of allotment of securities in consultation with the stock exchange (iv) finalising the list of persons entitled to allotment of securities (v) processing and despatching allotment letters, refund orders or certificates and other related documents in respect of the issue. Hence, all the documents related with the aforesaid activities should be maintained by the Registrar to an issue. Further, Regulation 14 of SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993 also specified the documents to be maintained by the Registrar to an issue. Regulation 14 (2) reads as follows:
- *"14 (2) Every registrar to an issue shall also maintain the following records with respect to: -*
 - (a) all the applications received from investors in respect of an issue;*
 - (b) all applications of investors rejected and reasons therefor;*
 - (c) basis of allotment of securities to the investors as finalised in consultation with the stock exchange;*
 - (d) terms and conditions of purchase of securities;*
 - (e) allotment of securities;*
 - (f) list of names of allottees and non-allottees of the securities;*
 - (g) refund orders dispatched to investors in respect of application monies received from them in response to an issue;*
 - (h) such other records as may be specified by the Board for carrying on the activities as registrars to an issue".*

5.4 It is clear from the above provisions of Regulations that the Noticee who acted as Registrar to the issue should have maintained the aforesaid records for a period of three years as stipulated under Regulation 15 of SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993 SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993 which reads as follows;

- *“ Subject to provisions of any other law, the registrar to an issue or share transfer agent shall preserve the books of accounts and other records and documents maintained under regulation 14 for a minimum period of three years.”*

5.5 I find that MPFL had come out with a Public issue in the year 1996 for which the Noticee was appointed as the Registrar to the said issue. After the said issue, the Board had conducted investigation into the price and volume manipulation of the scrip MPFL and the irregularities in the said public issue. During the course of said investigations, the investigating authority had sought details from the Noticee pertaining to the said public issue of the company. The Noticee vide letter dated August 24, 1999 had submitted that the records pertaining to the public issue were handed over to the company MPFL vide letter dated September 11, 1996, on completion of the public issue since Noticee was not appointed as the Share Transfer Agent. I have examined the said letter dated September 11, 1996 and find that the following documents were handed over by the Noticee to the company MFPL.

1. Allottee Books (General / Stock)	4 Books
2. Non-Allottees Book and Applications	1 Book
3. Allotment Register	2 Registers
4. Brokerage Statement	1 Register
5. Bulk Register (General / Stock / Brokerage List)	1 Register
6. Cross Reference / List of Successful Allottees / SI 40 (Stock Invest List)	1 Register
7. Final Bank Certificate	
a. Bank of Baroda (General Public / NRI)	
b. Punjab National Bank	
8. Specimen Signature Cards	991 Cards

5.6 I find that the aforesaid records were required to be maintained by the Noticee for a minimum period of three years as per Regulation 15 of SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993. In that regard, I find that the public issue closed on March 16, 1996 and the three year period expired on March 15, 1999. Hence, it is clear that the Noticee had handed over all the records to the issuer company immediately after the issue and did not maintain it at least for the mandatory three year period as mentioned in Regulations.

5.7 I find that that 50 applications were received for 1000 shares each accompanied by cheque issued from an account maintained with State Bank of Indore, Raipur. These cheques are in continuous serial numbers (from 249570 to 245919). These continuous cheque numbers for different applications should have alerted the Noticee in scrutinizing the applications accompanied with these cheques to ensure whether they are genuine applications. However, the Noticee had accepted and allotted the applications made in order to bail out the public issue of the company MFPL and to attain the minimum 90% subscription level as per SEBI (Disclosure and Investor Protection) Guidelines. The Noticee in the aforesaid written submission had put onus of the said charge on the banker to the issue. I don't find this submission made by the Noticee acceptable. I am of the view that the said act of the Noticee reflected clear failure on their part to exercise proper skill, diligence and care in the conduct of their professional duties.

5.8 Further, I find that the Noticee had allotted the same set of shares to two different people. Shares with distinctive numbers from 003269501 to 003273500 were allotted to one Shri. Shrichand Singh Balam Singh and also to Ms. Nalini Rupchand Barve. Similarly shares with distinctive numbers from 004811001 to 004871000 were allotted to one Shri. Ramesh Chauhan and also to Shri. Ashok Biyani. In reply to the above charges, the Noticee in its written submission dated November 28, 2006 stated that the SEBI had provided a hand written list prepared by the company MFPL to prove the said charge. I am of the view that the said document should have been maintained by the Noticee itself. The very intention of the provision of Regulation 14 of SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993 is to avoid any chances of tampering of the records by the issuer company and to ensure investor protection. I observe that the aforesaid failure of the Noticee in maintaining the records itself establishes the failure to exercise proper skill, diligence and care in the conduct of their professional duties.

5.9 Apart from the above findings, I have considered other aspects which were submitted by the Noticee during the course of hearing as well as in their written submission. I find that the Noticee has only acted as Registrar to an Issue. They stated

that their registration as Registrar to an Issue had since long been cancelled by SEBI. Further, they stated that they are not acting as an intermediary in any capacity in the securities market and they are not playing any role in the securities market ever since. They also clarified that their company M/s PCS Industries Ltd. is now known as M/s PCS Technologies Ltd.

5.10 In view of the above, it is established that the Noticee who acted as Registrar to an issue in the aforesaid public issue of MFPL, has failed to observe Clause 1, 2 and 3 of the Code of Conduct prescribed in Schedule III read with Regulation 13 and regulation 15 of SEBI (Registrars to an Issue and Shares Transfer Agents) Regulations, 1993. At the same time, I have noted that the Noticee's registration as Category I Registrar and Share Transfer Agent had already been cancelled by SEBI and they are not acting as an intermediary in any capacity within the scope of SEBI Act or Rules or Regulations made thereunder. However, this does not mean that the Noticee is prevented from applying for a fresh registration to act as an intermediary especially as Registrar to an issue.

5.11 I also find that the Adjudicating Officer appointed by SEBI had imposed a monetary penalty of five lakh rupees on Noticee herein vide order dated May 10, 2001 on the finding that the Noticee herein had failed to comply with the requirements of section 15B read with rule 4(1)(b) of the Securities and Exchange Board of India (Registrar to an Issue and Share Transfer Agents) Rules, 1993, (the 1993 Rules) in the matter of CRB Mutual Funds. The said order of the Adjudicating Officer was upheld by the Hon'ble Securities Appellate Tribunal vide Order dated October 5, 2001 in Appeal. No. 31 of 2001.

6.0 ORDER

6.1 Taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Sections 11(4) read with 11B of Securities and Exchange Board of India Act, 1992 do hereby restrain the Noticee M/s PCS Industries Ltd. (now known as M/s PCS Technologies Ltd.) to act as an intermediary in any capacity for a period of six months from the date of this Order.

6.2 This order shall come into force with immediate effect.

Mumbai
December 05, 2006

V. K. CHOPRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA