

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**CORAM : Dr. T.C. NAIR, WHOLE TIME MEMBER**

Date of hearing : August 30, 2006

Appearance :

For Noticee : None

For SEBI : Shri P. K. Bindlish, General Manager
 Shri Ashok Nimbekar, Manager
 Ms. Kshama Chavan, Legal Officer

ORDER

UNDER SECTION 11B READ WITH SECTION 11 (4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELAITNG TO SECURITIES MARKET) REGULATIONS, 2003 AGAISNT SHIRISH C SHAH IN THE MATTER OF TRADING OF THE SCRIP OF SPANCO TELESYSTEMS AND SOLUTIONS LIMITED

1.0 Background

- 1.1 Spanco Telesystems and Solutions Limited (hereinafter referred to as "STSL") promoted by Shri Ashok Oberoi, Shri Bansilal Tandon, Shri V. V. Balakrishnan, Shri Vinod Kumar Nemani and Shri Jai Prakash Nemani was originally incorporated in 1984 as Kadambari Leasing Private Limited. Kadambari Leasing Private Limited had taken over business of STSL and adopted its name with effect from 11th November 1999. In 1984, the company had come out with a public issue of 1,50,000 shares at par and was listed on the Bombay Stock Exchange Limited (hereinafter referred to as "BSE").
- 1.2 Securities and Exchange Board of India (hereinafter referred to as "SEBI") received certain complaints about price rigging in the scrip of STSL. After receiving the observations relating to the same from BSE, SEBI conducted an investigation into the affairs of STSL for the period from 1st October 2000 to 31st July 2001 (hereinafter referred to as "investigating period"). The observations under the investigation are as under:
- 1.3 In an Extra Ordinary General Meeting held on 11th December 1999, STSL passed a resolution to allot 10,00,000 shares to its promoters and transfer its management control to Kapil Puri Group. The same day 10,00,000 preferential shares at Rs.10/- each were issued to Kapil Puri Group and others comprising individuals, not necessarily shareholders of STSL. The shares were listed on BSE on February 24, 2000. As on October 01, 2000, Shri Kapil Puri was Chairman of STSL.
- 1.4 From the distribution schedule of STSL as on August 24, 2001, it was observed that the public holding in STSL was only 5,77, 000 equity shares amounting to 8.26%. FIIs, NRIs, and Banks together had a holding of less than 1%. Other Body Corporates held 29.80%, while Promoters of STSL held 61%. Out of 637 shareholders, 19 shareholders held 94.67% of the equity capital of STSL.
- 1.5 A preferential allotment of 22,50,000 shares at Rs.15/- each (premium Rs.5/-) was made under section 81 (1A) of the Companies Act, 1956, on February 16, 2000, to the parties as mentioned in the table below. These shares were listed on BSE on June 26, 2000.

Table 1

S.No.	Name of the Allottee	Shares Allotted
1	Shri Kapil Puri	8,00,000
2	Neha Equisearch Pvt Ltd	3,75,000
3	Smt Kavita Puri	2,55,000
4	Shri Rajesh Chhabria	2,30,000
5	Shri Mahendra G Shah	2,00,000
6	Shri Sanjeev Chainani	1,75,000
7	Shri Kishore Saigal	60,000
8	M/s Networth Stock Broking Ltd	50,000
9	Smt Chanderkanta Malik	50,000
10	Sarvpriya Leasing Pvt Ltd	20,000
11	Shri Sudanshu Tewari	20,000

S.No.	Name of the Allottee	Shares Allotted
12	Shri Naresh Bahri	15,000
	Total	22,50,000

- 1.6 Further, a special resolution was passed in an Extra Ordinary General Meeting convened on January 30, 2001 under section 81 (1A) of the Companies Act, 1956 to allot 30,00,000 equity shares at Rs.52/- each (premium Rs.42/-) on preferential basis to the following persons:

Table 2

S.No.	Name	Shares Allotted
1	Shyam Telecom Ltd	15,60,000
2	Shri Rajesh Chhabria	7,20,000
3	Shri Kapil Puri	7,20,000
	Total	30,00,000

- 1.7 Though the resolution was passed to allot shares in the above manner, no allotment was made within stipulated period of three months. An Extra Ordinary General Meeting was held on May 29 2001 wherein a resolution was passed to allot 30,00,000 shares at Rs.10/- each for cash at a premium of Rs.27/- per share aggregating to Rs.11,10,00,000/- on preferential basis to the persons mentioned in the above table. It was observed that the premium structure was reduced from Rs.42/- to Rs. 27/- per share.
- 1.8 It was observed that there was an effort to create artificial volume in the scrip of STSL during the period of investigation, to influence the terms and conditions of the preferential allotment mentioned hereinabove. It was alleged that a set of brokers/members of BSE have traded in the scrip of STSL and indulged in creating artificial volumes thereby influencing the price of the said scrip. Accordingly, it is alleged that volumes in the scrip of STSL were high as compared to the volumes prior to and after investigation period. The price of the scrip on October 01, 2000 was Rs.50/- with a volume of 1,000 shares. The price had reached its peak of Rs.54.95/- on October 06, 2000 and the number of shares traded were 2,300 after which the price had come down to a low of Rs.18.80 with 14, 660 shares being traded on April 20, 2001. Further, it was noticed that the price of the scrip had started rising and by June 29, 2001; it had reached Rs. 44.55/- with a trade volume of 61,460 shares. After this period, the price of the scrip again started falling and at the end of the investigation period i.e., on July 31, 2001, the price of the scrip was hovering around Rs. 26/- whereas traded volume reported at the exchange on the same day were 7,600 shares.
- 1.9 A group of brokers at BSE had traded and indulged in creating artificial volume and influencing the price of the scrip of STSL. It was observed that one Shri Shirish C. Shah (hereinafter referred to as "Shri Shah") had introduced almost the entire set of clients who had traded in the scrip of STSL and there were also complaints that were received from the brokers who were deposed before the investigating team. Shri Shah was an investor and doing jobbing for various scrips and did not have any other business or profession. He had introduced several clients to various brokers to trade in the scrip. He had also introduced clients to banks and depository participants to open bank / demat accounts. Most of the clients he introduced were connected to him, having same address or same telephone number etc. The table given below shows the name and trading details of the client who were related to Shri Shah and basis upon which these clients were related to Shri Shah.

Sr.No.	Name of Clients	Relationship with Shri Shirish C Shah	Net Volume	Gross Volume
1	Shri Hitesh C Shah	Same Address	1915	421065
2	Shri Narayandas J Thakkar	Same Address	0	67300
3	Shri Indumati U Goda	Introduced	8835	322871
4.	Shri Jignesh N Shah	Same Address	7280	97358
5.	Shri P. B. Sudarshan	Introducer	2106	364232
6	Shri Chanderkant Shah	Introducer	0	100960
7	Shri Apurvi S Shah	Introducer	0	81098
8	Shri Baban Sonate	Introducer	0	142840
9	Shri Rekha H Vakharia	Introducer	0	40400
10	Shri Raj Investment	Introducer	0	20000
11	Shri S. Shaktisarvanan	Introducer	6498	273372
12	Shri S. Manivanan	Introducer	510	139710
13	Shri Samir N. Shah	Introducer	16540	207560
14	Shri Sayed Qader Yusuf	Introducer	170	149030
15	M/s. Platinum Finvest	Same DP Account	-4600	191546
16	Shri Nimish U Goda	Introducer		47800
17	M/s. Mercap Investment	Same Address	0	30700
	Total		39254	2697836

- 1.10 The volume traded by the clients he introduced was 26,97,836 shares amounting to 48% of the gross volume at the exchange. The clients introduced by Shri Shah had mostly squared off their transactions.

- 1.11 Shri Shah also confessed in his statement before the investigating officer that he introduced all these clients to several brokers and sub broker to trade in the scrip of STSL. In addition, it was confirmed that he introduced Bank and DP accounts of these clients and used to place the order on behalf of clients. Further in the affidavit dated October 30, 2002, he confirmed that he used ration cards and photo identities of family of one Shri Ajay Goda to create bank accounts and demat accounts without the consent of Shri Ajay Goda and his family. Shri Shah had given an affidavit to Shri Ajay Goda admitting his guilt. He further confirmed that he had done the above voluntarily without the knowledge and consent of Shri Ajay Goda or any member of his family. Shri Shah did not trade in the scrip. During the investigation he had admitted that he had introduced several clients to various brokers to trade in the scrip. He had also admitted that the clients were merely his front and that they had lent their names for the purpose of records. In addition to this another complaint was received from Shri Chandrakant Shah through his advocate Shri Ajay Khandar, High Court informing the wrong doings of Shri Shirish Shah.

2.0 Show cause notice and reply

- 2.1 After the completion of investigation, a show cause notice dated December 12, 2003 was issued to Shri Shah intimating him the findings of investigation and to show cause as to why action should not be initiated and appropriate directions under section 11B read with section 11(4) of the Securities Exchange Board of India Act, 1992 (hereinafter referred to as "the Act") read with regulation 11 of Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, (hereinafter referred to as "PFUTP Regulations") should not be issued against him for violating Regulation 4 (a), (b), (c) & (d) and Regulation 6(a) of PFUTP Regulations.
- 2.2 Shri Shah vide letter dated December 31, 2003 replied to the above show cause notice and inter alia made the submissions as under:
- 2.2.1 *Shri Shah traded only for himself and his family. He denied having traded in anyone else's name other than his family;*
- 2.2.2 *Shri Shah admitted that he knew the persons mentioned in the show cause notice and introduced them to the brokers, banks and depository participants. He submitted that since some of them did not have a proof of residence he had allowed them to use his address in good faith. However he denied that he had operated their accounts or had placed any orders to brokers on their behalf. He submitted that it was only incidental that all the clients he had introduced have traded in the scrip of STSL. He admitted that he might have offered his opinion about the scrip of STSL doing well. He further submitted that his opinion was purely based on the information he gathered from the price and volume of the scrip as reported in the financial press. It was purely a coincidence that the said parties had traded in shares of STSL.*
- 2.2.3 *Shri Shah denied all the admissions he made during SEBI investigation that he used the clients he introduced as front to trade in the scrip or that he had placed orders with brokers on their behalf or operated their bank / demat accounts. He submitted that when he deposed before SEBI he was apprehensive and pleaded that nothing he stated during investigation should be held against him.*
- 2.2.4 *With regard to the affidavit signed by Shri Shah, it was submitted that he gave that affidavit to Shri Ajay Goda under pressure and threat. He was forced to admit all the transactions in the name of Shri Ajay Goda and his family members were done by him on his own decision and that he alone was responsible for all the transactions done in the scrip of STSL. He further, denied admissions made in the affidavit.*
- 2.3 Shri Shah vide letter dated February 5, 2004 further submitted that he was in no way connected with STSL in his personal capacity or on behalf of anyone associated with him. He once again pleaded that he be exonerated from the charges of creating artificial market.
- 2.4 Due to change in competent authority, an opportunity for personal hearing before the Whole Time Member was granted to Shri Shah on April 25, 2006. Shri Shah did not appear for the hearing but sought an adjournment for a period of 6 to 8 weeks through his Advocate, Shri Sandeep Karu, on the contention that he was out of town on vacation and would be expected to return in the first week of June.
- 2.5 In view of the above, another opportunity of personal hearing was granted to Shri Shah on June 12, 2006. However, his Advocate again sought an adjournment of 4 weeks vide its letter dated June, 12 2006 stating that Shri Shah was bedridden with spinal problem. Acceding to the request of the Advocate, a last opportunity of personal hearing was given to Shri Shah on July 11, 2006 for making submissions, subsequent to which, the Advocate, vide letter dated July 6, 2006, requested for inspection and copies of documents relied upon by SEBI. The Advocate appeared on the decided date of hearing and requested for adjournment for a period of 4 weeks, stating that Shri Shah was hospitalized. Considering the facts and circumstances, a further opportunity of hearing was given on August 23, 2006. However, due to official exigencies on the part of SEBI, the same was postponed to August 30, 2006. The Advocate, instead of availing the opportunity of hearing, requested for inspection of documents relied upon vide its letter dated August 30, 2006.

3.0 Consideration of Issues

- 3.1 I have carefully considered the facts of the case, investigation report, show cause notice and the submissions made by Shri Shah in response to the same. After going through the requests for adjournments, I find that the adjournments have been

granted in all cases on the belief that the said requests were genuine. However, I observe that Shri Shah has been repeatedly seeking adjournments on different grounds and has been attempting to delay the matter. As regards the issue of inspection of documents at this stage of hearing, I have noted that this issue was not raised by Shri Shah or his Advocate at earlier proceedings at the stage of submissions or hearing before the then Whole Time Member. I have further noted that while seeking adjournments on first two occasions in the present proceedings, Shri Shah did not raise the issue of inspection of documents. The issue of inspection of documents was raised only before the third scheduled date of hearing by letter dated July 6, 2006. However, I note that the issue of inspection of documents was not raised when Shri Sandeep Karu, advocate of Shri Shah appeared before me on the scheduled date of hearing i.e. 11th July, 2006, wherein he only sought the adjournment which was duly granted. I find that enough time and opportunity had been given to Shri Shah to present his case and ends of natural justice have been met. It is especially so as all the relevant documents had also been enclosed with the show cause notice issued to him. In view of the above, I am proceeding in the matter on the basis of material available including the written submissions of Shri Shah.

- 3.2 I note that Shri Shah had admitted during the investigation that the clients he introduced to various brokers were merely his front and that he had used their names for the purpose of records. However, in his reply to the show cause notice issued to him subsequent to the investigation, he had retracted and denied all the allegations made against him and had stated that during the deposition before SEBI *"he was apprehensive and in awe of the powers and demeanor of the officials who were fielding questions"*. I have noted that Shri Shah had deposed before Investigating Authority on oath under the provisions of SEBI Act, 1992. He has also stated in his deposition that he has made the statement without any coercion. In the absence of any evidence to the contrary, the contentions raised by Shri Shah now, are unacceptable.
- 3.3 I have observed that Shri Shah in his reply had admitted that he knew all the clients and submitted that he had let the clients use his address and contact number in good faith as they did not had the required documents. I note that all the clients introduced by him had traded in the scrip of STSL. Benefit of doubt could be given to Shri Shah had he let one or two clients use his address and contact number. However in the present case 4 clients were allowed to use his address by Shri Shah. Besides it can not be co-incidence that all of these four clients and all other clients introduced by Shri Shah dealt heavily in the scrip of STSL creating volumes. There are too many coincidences to accept the submission of Shri Shah that he had only let the clients use his address and contact number. From the facts and circumstances of the case the preponderance is pointing more towards Shri Shah having used the name of the clients to trade in the scrip of STSL.
- 3.4 With regard to the affidavit that Shri Shah had given to Shri Ajay Goda, Shri Shah submitted that he had signed the same under pressure and threat by Shri Ajay Goda. Further, Shri Shah submitted that when he signed the affidavit, Shri Ajay Goda was facing enquiry before SEBI and to escape the same Shri Ajay Goda had victimized Shri Shah by way of threatening and pressurizing him to sign the affidavit admitting that all the transactions done in the scrip of STSL in the names of Shri Ajay Goda's family members were done by him on his own and that he alone was responsible for all the transactions done in the scrip of STSL. Shri Shah added that he had filed a written complaint at MRA Marg Police Station about the affidavit that Shri Ajay Goda had made him to sign under threat and pressure and that he was apprehensive about Shri Ajay Goda misusing the affidavit. However I note that Shah had not produced any evidence in support of his submission about filing a written complaint by way of providing a copy of the complaint he claimed to have filed at MRA Marg Police Station to SEBI along with his reply to the show cause notice. In the absence of any proof produced by Shri Shah to show that he had in fact signed the affidavit under threat and pressure as he has claimed, I do not accept the submission of Shri Shah on this count.
- 3.5 Thus it can be seen from the facts as enumerated above that Shri Shah is the kingpin behind the transactions of all the clients named above. Shri Shah collected signed cheques from the clients and used their name to trade in the scrip in an illegal manner. I find that Shri Shah has generated artificial volume and tried to influence the price of the scrip. It has been observed that the trades done by him through several clients in nature were of "squaring off" type and the delivery affected was minimal i.e. about 40,000 shares. Shri Shah has employed fraudulent methods to trade in the scrip of STSL and have opened fictitious accounts on the basis of personal information collected by him. I further note that clause 6 of the affidavit signed by Shri Shah clearly states that he had obtained photographs and ration cards of Shri Ajay Goda's family members for the purpose of opening accounts, demat accounts, pan numbers etc. without the consent of clients. Shri Shah also admitted that all the clients were acting on his behalf which itself is an open and blatant admission of his fraudulent act. Apart from his role in the manipulation of scrip Shri Shah is also guilty of frauds which is evident from the manner in which he has admitted his guilt in an affidavit given to Shri Ajay Goda. Shri Shah has also masterminded the operations in the scrip of STSL as about 17 clients were acting as front for him. I find that the same is a serious offence and need to be punished.
- 3.6 After considering the facts and circumstances of the case, I find that Shri Shirish Shah by trading in the scrip of STSL, through his front entities , created a false and misleading appearance of trading which contributed to building up of artificial volumes and price in the scrip of STSL. I am of the view that innocent investors may be trapped by such false appearance of trading in securities which is detrimental to the interest of investors and orderly development of the securities market. From the material available before me, I find that Shri Shah has violated the provisions of Regulation 4

(a), (b), (c) and (d) and Regulation 6(a) of SEBI (Prohibition of fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

4.0 Order

4.1 In view of the above and in exercise of the powers conferred upon me under Sections 19, read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the Securities and Exchange Board of India (Prohibition of fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I do hereby restrain Shri Shirish C. Shah from accessing the securities market and prohibiting from buying, selling or dealing in securities, either directly or indirectly, for a period of two years.

4.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: February 22, 2007

T.C. Nair

Whole Time Member