

SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: T. C. NAIR, WHOLETIME MEMBER

Appearance of the parties

For Shri Harvinder Kumar Bagai: None

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

Shri Ashok Nimbekar, Manager

WTM/TCN/IVD/ID3/97/02/2007

DIRECTIONS UNDER SECTION 11(4) READ WITH SECTION 11B OF SEBI ACT, 1992 AND REGULATION 11 OF SEBI (PROHIBITION OF FRAUDELENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST SHRI HARVINDER KUMAR BAGAI IN THE MATTER OF M/S. MEDIA VIDEO LIMITED.

Background

1. M/s. Media Video Ltd. (MVL) was incorporated as a public limited company on 03.12.86 and certificate of commencement of business was obtained on 11.12.86. MVL shares were listed at the Stock Exchange, Mumbai (BSE), the National Stock Exchange (NSE), the Madras Stock Exchange (MSE) and the Delhi Stock Exchange (DSE). DSE was the regional stock exchange for the company. MVL was involved in the business of manufacturing blank and pre-recorded video cassettes. Later, MVL diversified into manufacturing of rechargeable emergency lamps, video and television games, etc.
2. For the purpose of expansion, MVL came out with a public issue of 26.64 lakh equity shares at a premium of Rs.5/- each aggregating Rs.3.99 crore in March, 1995. BSE as part of its surveillance mechanism and in suspicion of price manipulation in the scrip of MVL, suspended its trading indefinitely with effect from 10.01.00. Consequently, trading in the scrip was also suspended at the other exchanges. In addition to the above action, stock exchanges were advised to conduct an investigation into the trading in the scrip of MVL and forward the report to SEBI for further necessary action.
3. MSE had in its report submitted that no trades were carried out in the scrip of MVL during the period 01.09.99 to 10.01.00. DSE had found nothing incriminating in relation to the transactions in the scrip of MVL during the said period. BSE had also made a similar observation as DSE in its report and had requested for permission to revoke the earlier suspension ordered. However, NSE had in its report observed that entities close to MVL had actively traded in the scrip during the reference period. Also, it was observed that the trading pattern in the scrip seemed to suggest a net buy by the aforesaid entities and creation of artificial volumes during the No Delivery period. Also, the fact that they were net buyers in the scrip after the No Delivery period seemed to suggest that the movement in the price of the scrip without any commensurate corporate development was due to the trading of the aforesaid entities.
4. At NSE the price of the scrip during the period of investigation had gone up from Rs. 8.20 on September 1, 1999 to Rs.178.70 on December 24, 1999. The scrip was in 'no delivery period' during settlements 1999042N to 1999045N (October 20, 1999 to Nov. 16,1999). The steep rise in the price was seen after the no delivery period when the price had gone up from Rs.41.85 to Rs. 178.70 on December 14, 1999. The increase in price was also coupled with increased average volumes, which had gone up from 51,938 shares in September, 1999 to 401823 shares in December, 1999.
5. On receipt of the aforesaid reports, SEBI had conducted an investigation into the trading in the scrip of MVL during the period 01.09.99 to 10.01.00. Details were collected from the entities involved including the brokers, company, clients, banks etc. It was noted from the trading details of the various brokers who had dealt in the scrip of MVL that one Shri Harvinder Kumar Bagai was a common client in the scrip of MVL. He had traded through M/s. First National Securities India Ltd. (FNS), M/s. Tees & Toes Finance and Investments Pvt. Ltd. (TTF), and M/s. Moneycare Securities and Financial Services Ltd. (MSF).
6. It was observed that Shri Bagai had commenced trading only from 30.10.99. Also, Shri Bagai and his family were observed to have dealt in the scrip of MVL from MSF through an un-registered sub-broker M/s. Atul Investments.

The Details of trading of Mr. Bagai and his family members during the period of investigation are as under:

Name of the Broker	Settle. No.	Buy	Sell	Net
Moneycare Securities	1999039	1100	0	1100
- do-	1999039	1100	0	1100
First National Securities	1999046	111000	111000	0
-do-	1999046	111000	111000	0
Tees & Toes Finance & Investments	1999046	135800	135800	0
First National Securities	1999048	0	29400	-29400

-do-	1999048	0	29400	-29400
Tees & Toes Finance & Investment	1999048	0	26300	-26300
First National Securities	1999050	9300	0	9300
-do-	1999050	9300	0	9300
Tees & Toes Finance & Investments	1999050	25200	0	25200

7. FNS in its submissions before SEBI admitted that Shri Bagai was introduced to them by Shri B. C. Sharma, who was an employee of FNS. It was also submitted that the whereabouts of Shri. Bagai or Shri Sharma was no more available with FNS. It was also noticed during the course of investigation that Shri Bagai was a tenant of Shri. Dhiraj Suri, who was employed as GM (Administration) of MVL. However, MVL confirmed that no funds had been transferred either to or from Shri Bagai from MVL, its directors, their relatives or any associate companies at any point of time.
8. The bank details of Shri. Bagai (obtained from bank) were analyzed to ascertain the flow of funds and to trace their antecedents. It was noted that an account was opened with Punjab National Bank (Account Number 27963) on 23.10.99 with a cash deposit of Rs.1,000/-. Thereafter, two Bankers' Cheques (BC) were deposited in the account on 27.12.99 for Rs.17,61,927/- and Rs.8,40,376/-. These amounts were used to pay TTF and FMS for the purchase of shares of MVL on 27.12.99. These Bankers Cheques' were issued by Bank of India, Connaught Circus Branch and the Kangra Co-operative Bank Ltd., Jagatpuri Branch from the accounts M/s. S. K. Financial Services Ltd. (Account No. 711014) and M/s. Friends Portfolio Pvt. Ltd. (Account No. 1273) respectively. Summons sent to M/s. S. K. Financial Services Ltd. came back undelivered. M/s. Friends Portfolio Pvt. Ltd. submitted that they had not traded in the scrip of MVL and the payment made to Shri. Bagai was not traceable at their end. No further details could be obtained from M/s. Friends Portfolio Pvt. Ltd. It was also noted in the course of investigation that a part of the amounts received by Shri Bagai from these accounts were returned at a later date from the proceeds of share transactions carried out by Shri Bagai.
9. Summons issued by the investigation authority to Shri Bagai came back undelivered. On efforts to get the same delivered through TTF, it came to the knowledge of SEBI that Shri Bagai had moved to a new address which was not available with TTF. The account opening form with Punjab National Bank mentioned two addresses, one of which is in Mumbai. Summons were sought to be delivered at the Mumbai address on 23.07.04, but was informed by a lady who was a friend of the Bagais that, Shri. Bagai was out of India and she refused to accept the summons and to reveal their telephone numbers. A letter dated 24.07.04 was received from Shri. Bagai stating he had gone to Delhi to collect the necessary details as directed vide summons dated 01.03.04 issued by SEBI. Attempts to serve summons on 06.08.04 and 09.08.04 also failed to fructify due to refusal of the inmates to accept the same. A fax was received from Shri Bagai that he would appear before the investigating officer on 16.08.04 instead of 09.08.04 as he intimated that he was down with viral fever.
10. When Shri Bagai appeared before the investigating authority on 16.08.04, no documentary evidence or other records, that were directed to be produced vide the summons issued by SEBI were made available. He confirmed that he would present himself before the investigating authority on 23.08.04 with the requisite information as called for by the summons issued. It was also made clear to Shri Bagai that no further extension of time would be given and consequences of not furnishing the information in response to summons would follow. Despite this, Shri Bagai failed to turn up on 23.08.04 and to furnish any information as called for by SEBI. Instead a letter dated 21.08.04 was received seeking further an extension of 45 days to furnish the information. Subsequent summons dated 02.09.04 and 27.09.04 were issued to Shri. Bagai to present before the investigating authority and furnish details called for. As had been done on the previous occasions, a letter dated 25.09.04 was received seeking further extension of time by 15 days for submission of the information.
11. The repeated attempts of Shri Bagai not to accept the summons and also not to respond to the information called for by SEBI can only be construed as an effort to disrupt the investigation and to delay the process leading to action against the errant entities. This, combined with the fact that Shri. Bagai himself was a major contributor to the trading and hence the manipulation in the scrip compounds the nature of violation. In view of the above, no further opportunities were decided to be given to Shri Bagai to present himself before the investigating authority in response to the summons.

Show Cause Notice – Reply and Hearing

12. Thereafter, on completion of the investigation, a show cause notice dated 28.12.04 was issued to Shri. Bagai stating the aforesaid facts and charging him with violation of Regulation 4(a) and (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and Section 11C (6) of SEBI Act, 1992. He was also required to show cause as to why suitable directions under Section 11(4) (b) read with Section 11B of SEBI Act, 1992 including directions debarring him from accessing the capital markets/ dealing in securities for suitable period may not be issued for the aforesaid violations. He was also informed that a reply if any, to the show cause notice should be received within 15 days of the receipt of this show cause notice or else it would be presumed that he had nothing to submit before SEBI in response to the show cause notice.
13. A letter dated 10.01.05 was received from Shri Bagai stating that the information called for by SEBI was not readily available with him and to substantially reply to the allegations in the show cause notice, he needed at least 8 weeks time. A letter dated

19.01.05 was issued to Shri Bagai stating that he was given an extension of time till 15.02.05 to respond to the show cause notice. Thereafter, no response was received from Shri Bagai.

14. Subsequently, a hearing was scheduled before me on 10.05.06 for Shri Bagai, to appear and make his submissions in response to the allegations made out in the show cause notice issued to him. The service of the notice when was sought to be effected, at the last known address of Shri Bagai. It was returned with the specification that Shri Bagai had shifted the residence in October, 2005 as submitted by one Ms. Anita R. Gursahaney. Shri. Bagai very well being aware of the proceedings against him by SEBI failed to inform SEBI about the change of address. This act of Shri Bagai can only be construed as a deliberate attempt to circumvent the efforts of SEBI to proceed against him. However the said notice was pasted at the last known address of Mr. Bagai.

Consideration of Issues

15. I have considered the findings brought about in the investigation conducted by SEBI, charges made out against Shri Bagai in the show cause notice issued to him and his response to the same. I have seen that SEBI had tried valiantly to serve the summons upon Shri Bagai for submitting vital information to enable SEBI to proceed with the investigation in the scrip of MVL. Shri Bagai had side stepped every attempt to serve the summons upon him by submitting false reasons for not being able to collect the summons. When he ultimately appeared before the investigating officer he failed to furnish any of the information called for by SEBI and also to offer any explanations sought therein. The investigation officer had no other option but to give up after numerous unsuccessful attempts. Even when the show cause notice and hearing notice was issued to him, he paid scant respect to the proceedings before SEBI and never bothered to respond thereto. I, therefore, feel it would be appropriate to proceed based on the information gathered by the investigation conducted by SEBI against Shri Bagai. Numerous opportunities for appearing and presenting before the investigating officer and me have already been provided to Shri Bagai which would tantamount to a substantial satisfaction of the principles of natural justice.
16. I have seen from investigation that Shri Bagai had traded in the scrip of MVL during the period 01.09.99 to 10.01.00, through FNS, TTS and MSF. The trading pattern in the scrip of MVL during the aforesaid period had led to conclusion that artificial volumes were being created along with increase in price. Shri Bagai had during the said period traded substantially and was a net buyer in settlement number 39, squared off position in settlement no 46, sold in settlement no 48 and had been a net buyer again in settlement no 50.
17. At NSE, the price of the scrip had risen from Rs.8.20 on 01.09.99 to Rs.178.70 on 24.12.99 including the intervening No Delivery period between settlements 42 and 45. The sharp rise in the price of the scrip was subsequent to the 'no delivery period' i.e. from settlement no 46. I have observed that Sh, Bagai has dealt substantially during this period and specifically in settlement no. 46 wherein he had bought and sold 3,57,800 shares. This phenomenal price rise was none but the handiwork of Shri Bagai whose trades have been illustrated earlier. These transactions had the effect of not only rising the price to such heights along with the increased artificial volumes but also perhaps lured innocent investors to the scrip at the artificially increased price.
18. In view of the aforesaid findings of violations and the fact that Shri Bagai did not pay any heed to regulator's repeated requests to furnish the information as required by SEBI, I have no hesitation in concluding that Shri Harvinder Kumar Bagai had violated the provisions of Regulations 4(a) and (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

Order

19. Therefore, in exercise of powers conferred upon me under Section 19 of SEBI Act, 1992 read with Section 11 (4) and 11B of SEBI Act, 1992 and Regulation 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, I hereby direct that Shri Harvinder Kumar Bagai be debarred from accessing the capital markets and dealing in securities directly or indirectly for a period of one year.

The order shall come into force with immediate effect.

Place: Mumbai
Date: 23.02.2007

T C Nair
Whole Time Member
Securities and Exchange Board of India